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A COMPLEAT PARSON:

OR,

A DESCRIPTION OF ADVOWSONS,

or Church-liuing.

WHEREIN

Is set forth, the intrests of the Parson, Patron, and Ordinarie, &c.

WITH

Many other things concerning the same matter, as they were deliuered at seuerall Readings at *New-Inne*,

By I. DODERIDGE,

Anno, 1602, 1603.

And now Published for a Common good, by *W. I.*

LONDON.

Printed by *B. A.* and *T. F.* for *Iohn Grove*, and are to bee sold at his Shop at *Furnivals Inne* gate.

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To the Reader.

BOokes that are not able to protect themselues, may require large Preface and Dedication, this needeth none, it teacheth the Law, and therefore cannot feare any Informer; errors of the print may here and there offer themselues, but for any other, the honourable Name of him (to whom Posteritie shall thankfully acknowledge a debt for his *Worke*) in the very Title page is able to vindicate.

If thou beeſt a Caviel, yet bee not too quicke at cenſure, ſatiſfie thy ambition for the preſent with a Readers place; thou mayeſt in time come to bee a iudge, which euery man is not borne too.

Farewell.

THE

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A COMPLEAT PARSON:

OR, A DESCRIPTION OF ADVOVVSONS.

LECT. I.

The name, nature, Diuiſions, Conſequents, cauſes, and incidents of Advowſons or Patronages.

Oraſmuch as wee are ſaid to know, *cum cauſas cognoſcimus*, and ſeeing hee laboureth in vaine, that ſeeketh to apprehend the knowledge of the accident, which is ignorant of the ſubſtance: and ſeeing nothing ſetteth out the nature of the thing; but the Deſcription and Definition, and

Tull: Offic. lib. 1. that *Omnis que à ratione ſuſcipitur, de re aliqua, inſtitutio, debet a definitione proficiſci, vt intelligatur quid ſit id de quo diſputatur:* I will begin as good order requireth, with the Deſcription of an *Aduowſon*, that the nature thereof being knowne, wee may the better obſerue, the coherence and congruence of this kind of Learning.

Quid. An *Aduowſon* therefore generally conſidered, is a right that a man hath to preferre his friend, or any fit perſon, to promotion Preſentatiue or Donatiue.

This Definition is generall, and may be attributed to all perſons, whereof a man may haue a *Quare Imp:* if he be diſturbed; for, the Writs mentioned in the Statute, lyeth not onely of Dignities Preſentatiue by the courſe of the Common Law, but alſo of promotions Donatiue by this Statute. As Chaunteries, Donatiue, * Free Chappels, &c, Alſo it lyeth, of a Subdeaconſhip, or Hermitage, which alſo may bee Donatiue, and this is grounded vpon the words of the Statute, *De cetero concedantur breuia de Cappillis, Prebendis, Vicarijs, Hoſpitalibus, Abbatis que prius concedi non conſueuerunt*; Yet neuertheleſſe, I read that a *Quare Imp:* was maintained of a Chappell, by the Common Law, but ſuch a Chappell (perchance) was Preſentatiue, and not Donatiue. Promotions preſentatiue (whereof the Writs are mentioned

Fitzh. N. B. 30. Ibid. 33. a. 31. E. Ib. 34. 9. E. 114. H. 3. Fitzh. quare Imp. 183

tioned in the Statute) were maintained at the Common Law; as Church, Chaunteries, and Chappels Presentatiue, and such like.

Summa hostiensis de jure patrono.

Sũma Anglie, eod. tit.

Sũma Silvestrina tit Patronatus.

And therefore as the afore-specified Definition, or Discription is generall, and appliable to both: So are these subsequent more properly to be applied to Churches *Advowsons*, in which are cures of Soules.

An *Advowson*, or as the terme, *Ius Patronatus est potestas presentandi aliquem instituendũ ad beneficium Ecclesia simplex & vacans:* and of other respects, the cause and incidents of *Advowsons*, is Described more amply in such manner, *Ius patronatus, est ius honorificum, oneroſum, & utile.*

In effect this, A *Patronage*, or an *Advowson*, is a right to present to the Bishop or Ordinarie a fit person, by him to bee admitted and Instituted into a Spirituall Benifice when it becometh void: And hee that hath such right to present, is called Patron; who is thus described, *Patronatus est defensor Ecclesiæ, qui habet ius presentandi Episcopo aliquem vel aliquos in aliqua Ecclesia & in ea ab eo instituatur.* And hee is so called *De patrocinio*, of defence; For that, that he should defend the Church, or *à similitudine Patris, quia sicut pater filium, sic patronus Ecclesiam, de non esse, deducit ad esse.*

He is called of Old *Glanvile*, *Advocatus*, as that he should say, an Advocate of the causes of

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the Church, and therefore the inheritance is called *Aduocatio*, or *Aduowſon*, or is deuiſed *De vocando*: for that, that the Patron hath power, for the preſentment of a fit parſon, by the name of his preſentation. And heere by the way, let no man thinke, that I thruſt my ſelfe *in meſſem alienam*, and to borrow of the Cannoniſts, as well now the Deſcription and Etimologie before ſhewed, and after alſo, to fetch from them more high matter. But let ſuch curious Carpers, (if any bee) remember the ſpeech of *Aſliton*, * who affirmeth; That euery *Aduowſon*, and right of Patronage, dependeth vpon two Lawes that is to ſay, The Law of holy Church, and our Lawes, ſo that the true determination of ſuch learning, is as he ſaith; *Per ius mixtum*, by both Lawes; that is Eccleſiaſticall or Temporall: And therefore, when we purpoſe to ſeeke the right intelligence, or true vnderſtanding of any things in this kind of learning, wee muſt of neceſſitie bee beholden to them.

34. H. 6, 40 v, Aſliton.

But to returne where wee digreſſed.

The materiall cauſes and ſubiects, in which this learning dependeth, are the things before mentioned. As Churches, Chanteries, and Chappels preſentatiue, and ſuch like,

Churches are of three ſorts { Cathedrall, Collegiall, and Parrochiall.

A Cathedrall Church, is the seate or Church of a Bishop, and therefore hee onely may be said Incumbent thereof.

Collegiall or Conuentuall Churches, are such, as in times past, haue beene in Priories, Abbeyes, or such like, and are still in Colledges.

Parrochial Churches, are well knowne, and are those, *Ad quem plebs conuenit ad precipienda Sacramenta Baptismatis, & Corporis Christi vnde pabulum ad animas sustentandas libere suscipiunt*, for the Incumbent thereof, is onely charged with the cure of Soules. And it is commonly called by the name of *Rectorie*, which is into two sorts diuided, being eyther a Parsonage, or a Vicaridge. And so much briefly, for the name, matter, and substance of *Advowsons*. *Iohan. Belloniusde etimologijs.* 34. E. 3. *Fitzh. Qu. Imp.* 187.

The former cause or manner of this Inheritance, yeeldeth forth the vsuall and ordinary distinctions of Advowsons, to bee eyther appendant, or in grosse, or part appendant, part in grosse, eyther for a certaine time, or in respect of certaine persons.

The efficient Causes of a Parsonage, are
1. *Ratione Dotationis.*
2. *Ratione Fundationis.*
3. *Ratione Fundi.*

Ratione Dotationis, is, when hee, or those from whom he deriues his interest, endowed the same Church.

Ratione Fundationis, is, when hee or his Ancestors, or those from whom he claimes his interest, were founders of the same Church.

Ratione Fundi, is, when the Church was built vpon his or their Land, from whom hee deriues his interest; or all three together, as appeareth by the verse vsed amongst the Cannonists.

Patronum faciunt dos, edificatio fundus.

Summa hostiens. tit. ius Patronas.

The vsuall cause or causes, why Patronages of Churches are giuen by the Law, and bestowed vpon Lay-men; is, and were. *Vt inducantur laici ad fundationem, constructionem, & Dotationem Ecclesiæ.*

The fruit and effect of a Parsonage, consisteth in those three things. { *Honos. Onus, & Vtilitas.*

I.

Honos.

The *Honour* attributed to a Patron, consisteth in his right of presentment. In the discourse whereof, I shall afterward consider, what is required, before the same can bee attempted: then what the nature of presentation is; and lastly, what is required for the making of a full and perfect Incumbent.

Before the presentation can bee lawfully made, it is meet that the Church become voyde, and of avoydance, our Law taketh notice, the same being triable thereby.

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The manner and meanes how an Avoydance groweth, is eyther Temporall, or Spirituall.

1 Temporall, by the Death of the Incumbent.

2. Spirituall, and this is in diuers manners; that is to say, by Resignation, Depriuation, Creation Session, and entrie into Religion.

As touching presentation, we are to see, first, what it is, then who shall present, afterwards what person may be presented, and last of all in what manner the same must be done.

Those things that are required to make a perfect Incumbent, after the presentation had, dependeth vpon the Dutie of the Ordinarie; As first Admission, which requireth examination of the Clarke, whereupon sometime ensueth a refusall, and thereupon either notice, or no notice (as the case requireth) is to bee giuen to the patron.

If the Clarke be admitted, then he must bee instituted, wee are then to see, what Institution is, and what is the effect thereof, vpon which ought to ensue Induction thereinto, likewise we must see, what it is, by whom it is to be performed, and what it doth import.

If the Patron be remisse, and doth not present within the time limitted, then incurreth the lapps of the Patron to the Bysshop, and from the Bysshop to the Metropolitan, and from him to the Crowne, where it resteth, but if the

Bysshop

Biſhop take his time, then is his preſentation a Collation, and in the right of the patron himſelfe.

Onus, 2 The ſecond effect of a parſonage, (which is *Onus*,) reſteth onely in the defence of the Churches poſſeſſions, to which the Patron and Ordinarie by aide prayer, are to be called by the Incumbent, for the defence of the ſame, to auoid ſuch charges and incumbrances, as are vnduly laid thereupon.

Vtilitas, 3 As touching the third, which is *Vtilitie*, we haue not any thing to doe with it, in our law, but we muſt leaue the Conſideration thereof, to the Cannon law, for this *Vtilitie* is imployed for the ſuſtentation of the patron; for if hee or his poſterity being patrons doe fall to decay, then the Incumbent of the fruites of the Church by compulſarie Cenſure, of the Ordinary, according to that law, is to be enforced to make Contribution to them.

Breuia, All writs concerning this kind of Inheritance are either giuen to the patron, or Incumbent.

Writs giuen to the Patron are of two ſorts, for either he demandeth his inheritance, or preſentation, againſt the poſſeſſor, of the patronage, or he attempts ſuit againſt the Ordinarie, for either not doing, or doing his Duty vnduly.

In euery action brought againſt him that pretendeth poſſeſſion, it is to be intended, that eyther he is lawfully or vnlawfully poſſeſſed.

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The vnlawfull poſſeſſor, is the vſurper, againſt whom onely lyeth three Writs, which the Statute ſpeaketh of, namely; One of the right, as the writ of right of Advowſon, and the other two of the poſſeſſion, as a *Quare Imp*: and Darraigne preſentment.

Againſt the lawfull poſſeſſor, lyeth the writ of *Dower*, for the wife of him that dyed ſeized of ſuch eſtate as ſhe might be endowed of, and a *Ceſſavit* of the land againſt the Tenant. 33. H 6. 34 b. & 35. a att.

But no formedon lyeth for the iſſue in taile in Diſcender, nor for any in the remainder, nor for the Donor in the reuerter; for that, that if the *Advowſon* be in groſſe it cannot properly be diſcontinued, and being appendant it is to bee recontinued by the ſame meanes, that the land to which it is appendant, is to be recovered. 13. E. 3. 15 b. 33. H. 6. 33. a 5. H. 7. 36. b. 37. a Fitzh. 11. br. 217. b.

The Incumbent as touching his right for his Rectorie, hath the onely Writ of *Iuris vtrum*, and for his poſſeſſion, any other poſſeſſarie action. For if another happen (duriug his preſentation) to be preſented by the ſame patron, or doe come into the ſame Church, by courſe of the Law, ſo that the patronage commeth into Debate, their lyeth a ſpoliation, it being a ſuite in the *Spirituall Court*.

Lect. 2.

The Right that both the Patron and Ordinarie hath ioyntly to intermeddle with the Church.

IN the former Lecture or Reading, hauing deliuered in the proiect, a Discourse of Aduowsons, briefly discouering their Name, Nature, Diuisions, consequents, causes, effects and Incidents of the Patronage: Now it remaineth in like manner to prosecute euery of those parts, then but pointed at, with a more large and ample explication.

First therefore, it is to be considered, that in euery Benefice three persons haue interest. That is to say, the Parson hath a Spirituall possession. 12. H. 8. 7. br. & Pol. yard. The Ordinarie to see the Cure serued, And the Patron hath *Ius presentandi*.

Hence it is that I haue said, that a Patronage is a right of Presentation; therefore, it is called *Ius Patronatus*; not a power, nor an authoritie onely, but a Right, interest, or an Inheritance: Com. 284. a The word *Ius*, or Right, is diuersly intended, sometimes strictly, to signifie what is left a man, Com. 487. b when that, that was once his owne is wrongfully taken from him, as by *Disseisin* or such like.

Bracton Im. In which sence, the word *Droit* and *Tort*, are *priuatiue appositæ*, and is thus diuided; to be eyther

the right of Action, or right of Entrie; sometimes, in a more ample signification, as *Ius habendi*, *ius possessendi*, *ius disponendi*, by which occasion I purpose at this time to discusse, whether the Patron and Ordinarie haue right in the Rectorie or Benefice, and what manner of right it is that they haue; their right is called *Collaterall*, as we read, and not *Habendi*, nor *possessendi*, nor *retinendi*; for none of them, can haue, retaine, or possesse the Church or Rectorie, but their right is, *ius Disponendi &c.* wherein euery of them hath a particuler Charge to the possessions of the Church, so freed as that hee may maintaine such a one as is thereunto to bee presented.

That they haue a kind of Discription, it is proued by many reasons. First, no charge can bee found to be laid vpon the Church in perpetuity: to bind their successors, but the Patron and Ordinary must be made parties thereunto as all the bookes agree, and *Litleton* giues a notable reason for it. If the Charge be perpetuall, the consent of all three ought to Concurre, of which ensueth thus much, that if a writ of Anuitie be brought against the parson, and he pray in aide of the Patron and Ordinarie and the Patron maketh default, and the Ordinarie appeareth, and confesseth the action; or if the Ordinarie make default, and the Patron appeare, and confesseth the action, that this Anuitie shall not

2. *H*, 7, 30, *Ratio* 1.

12, *H*, 8, 7, *br.*

bind the ſucceſſor: but if they both appeare and one of them confeſſe the action, and the other ſaith not any thing, it ſhall bind the Rectorie in perpetuitie. For *Qui tacet conſentire videtur.* But if the Parſon onely with the conſent of the Ordinary for Tythes or other conſideration executorie, charge the Church in perpetuitie, it ſhall bee good, without the conſent of the Patron, as well as if the conſideration executorie had remained.

2, Secondly it followeth, that the charge of the Parſon, Patron and Ordinarie, ſhall bind in like manner as their Intreſt is. But if a man haue an Advowſon for yeares, and the parſon by the conſent of ſuch Patron and Ordinarie, grant rent charge in fee, if the Parſon dye within the terme, & the termor of the *Advowſon* preſents another, & the terme expireth, *Quere* if then the Anuity ſhal be deliuered, but it ſeemethby ſome that it ſhall be deliuered; for that, that this Incumbent was not the party, that made the grant and therefore he ſhould not hold it charged any longer, then during the intreſt of the Patron.

And therefore if two joyntenants in common, or parceners be of an *Advowſon*, who agreeth to preſent by turne, if the parſon ioyne in grant of a rent charge in fee; with one of them, the Parſon ſhall bee charged and alſo his ſucceſſors (*alterius vicibus*) for euer; becauſe, thoſe ſucceſſors (that commeth in) by him that made

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the Charge, ſhall bee ſubiect to it onely, and thoſe that commeth in by the preſentation of the Patron, that neither ioyned nor confirmed, the ſame ſhal hold their land diſcharged for euer.

Alſo, ſuch Anuitie with which the Rectory is charged, doth not properly charge the Land but the Parſon; for, if the grantee enter into any part of the Gleebe, he ſhall not ſuſpend the rent or anuitie.

And if the Parſon, Patron, and Ordinarie, ioyne in a graunt of an Anuitie to *S. H.* and his heires, except they ſpeake of the ſucceſſors of the parſon, and that the ſame bee granted for the parſon and his ſucceſſors, this cannot bee good longer then for the time, that the parſon that granted the ſame, continueth parſon; for, an Anuitie is nothing but a parſonall Dutie, and no otherwiſe. And if ſuch an Anuitie bee granted ouer, it is not needfull to haue Atturnment; all which proueth, that the ſame chargeth not the Land, but the parſon; yet neuertheleſſe, the parſon is charge, for if the Grantor aſſigne or be remoued by any meanes whatſoeuer, the charge followeth not his parſon, but reſteth vpon his Succeſſors, and the Iurie may bee taken of the Towne where the Church is, which proueth that ſuch grant chargeth the parſon in reſpect of the Land. ‘21. *H.* 7. 4. ‘v

Moreouer, when the Patron and Ordinarie, confirmeth the graunt of the parſon, it is requi-

ſite that the Confirmation be made during ſuch time, as he is Incumbent that made the Charge; for if hee Die, bee remoued, reſigne, or otherwiſe be depriued before the confirmation, ſuch Confirmation is voyd notwithſtanding.

If an Incumbent grant rent charge, to begin after his Death out of his Rectorie, and the Patron and Ordinarie confirmeth the ſame, this is good ſo long time as it is granted.

Ratio, 2. The ſecond principall Reaſon, to proue the intreſt they haue to the Church or Rectorie, is, That all three may charge the Church in perpetuitie, ſo may the Patron and Ordinarie doe onely in time of vacation, which charge ſhall bind the Succeſſor for euer. Becauſe none hath intermedling with the Rectorie, but the Grantors aforeſaid.

31, *E.* 3. *Graunt* 90. *Annitie* 53.

Ratio, 3. The third principall Reaſon; Is this, that as the Patron and Ordinarie in time of vacation, may charge the Church in perpetuitie, ſo they may make a releaſe, by which any Anuitie that chargeth the Church or Rectorie ſhall be extinguiſhed, euen in the time of vacation.

Fitzh. releaſe, 57. *Inr. ven.* 6. 33. *aide le Roie*, 103.

Alſo, if a man hath an Anuitie out of the Church of *S.* and afterward this Church is vnited to the Church of *D.* and after the vnited Church becomes void, if the Grantee releaſe in time of vacation to the Patron, that was patron of the other Church; that is to ſay, of *D.* and to the Ordinarie, ſuch releaſe ſhall not diſcharge

7, *H.* 6. 38. *b* 8, *H.* 6. 24. 21, *H.* 7. 44

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the Incumbent, becauſe, it was not made to the Patron of the Church that was firſt Charged, for although both the Churches are vnited and become one, yet are their patronages diſtinct and ſeuerall; moreouer, that Intereſt, that the Patron and Ordinary hath in the Rectory, is but Collaterall and *ius diſponendi*, and no otherwiſe, as hath beene formerly ſaid.

For if an Aduowſon diſcend to an Infant, and the Incumbent be impleaded in a writ of Anuitie, and prayeth ayde of the Patron and Ordinarie, and for that, that the Patron is within age, likewiſe prayeth that the *Perol* may demurre vndiſcuſſed during his nonage, this ſhall not bee granted; but the Infant in ſuch caſe ſhall bee oniſted of his age; becauſe the charge lieth vpon the parſon, and not vpon the patron, or Ordinary, which are not at any time to inioy the Rectorie themſelues, but onely are to haue the diſpoſition thereof. 7.*H.*4.16.*a*

Finally, to proue that it is meerely Collaterall, if the Patron and Ordinary do nothing but giue licence to the parſon to charge his Rectory with an Anuitie, this ſhall bee a good grant to Charge the Church in perpetuitie. For that, that it is not to any other free tenants a Charge but to the parſon; becauſe neither the patron, nor the Ordinarie can haue the Church themſelues, but only to diſpoſe and beſtow the ſame, vpon ſome other; neuertheleſſe, ſuch aſſent ought to be by writing. 11.*H*5 7. 8.*br*.14.*H*, 8,31.*a*.

LECT. 3.

Lect. 3.

The seuerall Intrests of the Patron and Ordinary, and what it is.

IN the Lecture next before, I haue set forth to you the right that both the patron and Ordinarie hath joyntly to intermeddle in the Church; Now it remaines, likwise that I declare their seuerall Intrests: Therefore at this present, I intend to deliuer somthing touching the Collataral Intrest of the patron sole, and after to examine, what manner of inheritance an *Advowson* is, and so to referre the Intrest of the Ordinary sole to a more conuenient place when as we shall come to speake of Admission and Institution.

What Collaterall Intrest alone, the patron hath in the Chuch, may in briefe thus be decyphered; first, by the common Law, (before the Statute of *Westminster* second,) as hee ought by the opinion of some men, to bring his writ of *Advowson*, of the fift part or any lesse part of the Tythes and oblations of the Church in any suite of *Indicauit*, attempted against the presentee, or Incumbent, that hath sued in the *Spirituall Court* for the Recouerie of the same, and hath caused the Patronage in this respect, to come into question

Fitzh, 30, b

queſtion, or as ſome men thinke hee might haue had his Writ of *Heres*, as a *Precepi quod reddat aduocationem quinque acrarum terræ*, or one acre of Land and ſuch like; For which cauſe the Statute was made, to be a reſtraint for bringing the ſame writ, of any leſſe part then of the fourth part of their Tithes; ſo that the Statute in this behalfe, was but a reſtraint of the Common Law: Which argueth, that the comparing of the Rectorie, tendeth Collaterally to be an impeachment and preiudice to the Patron himſelfe, and ſo importeth a Collaterall Intreſt that the Patron hath to the Church. Againe, by the graunt of the Church the *Aduowſon* paſſeth; wherefore *Herle* ſayd in the firſt part of *Ed.* 3. That it was not long ſince, when men knew not what an *Aduowſon* was nor meant, but by the Graunt of the Church, they thought the Aduowſon to be ſufficiently conueyed in the Law; For, ſaid hee, when they purpoſed to aſſure an *Aduowſon*, their Charter ſpecified it in the guiſt of the Church.

38, H, 6, 20 a, Per Fortescue.

Com, 157, b.

Moreoner, the King being Patron, hath often ratified and confirmed the eſtate of the Incumbent in a Rectorie, that an vſurper had preſented; by meanes whereof, hee cannot remoue the ſame Incumbent, vnleſſe for ſome cauſe hee repeale his Charter of confirmation.

45, E, 3: 19b

32, H, 6, 32 a. 7, H, 4. 13, b.

Notwithſtanding, if the King recouer by a *Quare Imp:* and after confirmeth the eſtate of

the Incumbent, that the vſurper preſented, by meanes whereof, he cannot be remoued; at the next Avoidance the King ſhall preſent, for the Iudgement giuen for him was not at any time executed, which alſo proueth the Collaterall Intreſt, that the Patron hath to the Church; for no parſons can lawfully confirme, but ſuch as haue right to the thing confirmed.

Fitzh, fol. 34. I. 9. E. 3

Ancient Bookes haue held, and that not without reaſon; That an *Aduowſon* hath ſuch an affinitie with the Church it ſelfe, to which it is granted, and to which it is a Collaterall Intreſt (as hath beene ſaid) that it ſhould paſſe by Liuerie of ſeiſin, made at the Ring of the Doore of the Church; and although by ſuch meanes it paſſe not at this day, being meerely a thing that lyeth in Grant; yet the ſame proueth the Collaterall Intreſt of the Patron to the Church; for this opinion holden in the Bookes, is granted for the like reaſons.

43. E. 3, 16
20. E. 4, 15, b.
5. H. 7, 17. b
6. H. 7, 3, a.
12. H. 7, 16, a
26. H. 8, 2. a.

In a Writ of right of *Aduowſon*, the Parſon ſhall bee ſummoned in the Church, or at the doore of the Church; And if a *Villeine* purchaſe an *Aduowſon* in groſſe, (*Littleton* ſaith) full of an Incumbent, the Lord of the ſame *Villein* may come to the ſame Church and there claime, and the *Aduowſon* ſhall be in him; All which things added to the former, ſufficiently proueth the Collaterall Intreſt that the Patron hath to the Church.

33. H. 6, 34 b.

Lect. 4.

What manner of Inheritance an Advowson is.

WEE are now to consider, what manner of Inheritance an *Advowson* is; wherefore, let vs consider, that euery Inheritance, is eyther:

Heriditas { *Corporata*, or *Incorporata*.

Hereditas corporata, is a Meadow, Messuage, Land, pasture, Rents, &c. That hath substance in themselues, and may continue for euer. *Cow*, 176, ♣

Hereditas incorporata is, Advowsons, Villeins, Wayes, Commons, Courts, Piscaries, &c. which are and may be appendant orappurtenant to Inheritances Corporate.

An *Advowson* therefore is Incorporate, of which a man may be Seisie, though not of *Demesne*, yet as of Fee, and as of right.

And although great Disputation haue beene in our bookes, whether an *Advowson* may bee holden or lye in tenure, yet the most authorities concurreth and are, that any *Advowson* either in 21, *E.* 3, 5. *a* 40, *E.* 3 44 *b*. 42, *E.* 3. 7. *b*. 1 *H.* 4. 16. *a*. 33, 43, *E* 3, 13. *b* *H*, 6, 34, *b*. 5, *H*, 7. 37, 34, *H*, 7, 26, *a*, 15. *H*, 7, 8, 33, *H*, 6, 35. 5. *H*, 7, 33, *b*.

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grosse or appendant, lyeth in tenure, aswell of a Common person, as of the King. For a *Cessauit* lyeth thereof, and some haue holden that the Lord of whom it was holded may distreine (eyther in the Church yard, or in the Gleebe) the beasts of the Patron onely, if they happen to be there found, 33. *H.* 6. *Godred* contrarie; but though the law bee, that there cannot bee taken any distresse, yet the same makes not any impeachment of the tenure, and being parcell of a Mannor or appendant to it; it may bee holden as some bookes are *pro particula illa*.

33.*H*,6.35 *b*.5.*H*,7, 37*b*,15,*H* 8,*a*.

14,*H*,42,*b*,

Therefore it is holden and said, that an *Advowson* is a tenement, and therefore whereas the King hath giuen licence to an Abbot to amortise lands and tenements to such a value, by force wherof he purchaseth an *Advowson*, and this was holden good, sufficiently pursuing this licence, and therefore in the booke an issue was taken, if the same *Advowson* were holden to *Capite*; and therefore, if a man grant a Ward, or *Omnia terra & tenementa*, that he hath by reason of his Ward, if there be an *Advowson* holden of the Lord, being guardian the same passeth to the grantee, by the words of *Omnia terras & tenementa*.

5.*H*.7 37, *Ou*,38,*b*.

Of an *Advowson* a *precipe quod reddat* lyeth very well, and a writ of *Dower* shall bee maintained of the same, by the wiues of such as haue such inheritance therein as giueth a dower, as

20,*E*,4,15,*b*

before

before hath beene ſaid, and ſo the husband of her that hath the inheritance in it ſhall be tenant by the Courteſie, although there neuer were had any preſentation by the wife to it. 5, H 7 38, 15, H 7, 18 a 7 E, 4. 6, Fitzh, 293.

But yet there ſhall not be any diſcent thereof, from the Brother, to the Siſter, of the entyre blood, by the maxime of *poſſeſſio fratris &c.* But the ſame ſhall diſcend to the brother of the halfe blood; vnleſſe, the firſt haue preſented to it in his life time, but if hee haue preſented in his life-time, then it ſhall diſcend to the next heire of the entire blood. 149. d. 3, H 7. 5. a. 19. E. 2. Fitzh. Qu: Imp, 177.

In *Aduowſon* is an inheritance and cannot bee deuided into parts or parcels, for in a writ of right of *Aduowſon*, if the tenant ſay, that the demaundant is teiſed of the ſixt part of the *Aduowſon*, this ſhall abate the whole writ, and yet part thereof may be in ſome ſort conſidered, for there is an vſuall difference taken, betweene *Aduocatio medietatis Eccleſiæ*, and *medietas Aduotionis Eccleſiæ.*

For *Aduocatio medietatis Eccleſiæ*, is where two Patrons be, and euery of them hauing right to preſent a ſeuerall Incumbent to the Biſhop, to be Admitted into one and the ſame Church, for diuers may be ſeuerall parſons, and haue care of Soules in one Pariſh, and ſuch *Aduowſon* is a like in euery of thoſe Patrons, but euery of their preſentments is to the moitie of the ſame Church; and therefore it is called *Aduocatio* Fitzh, 2, b, 32, H 6. 18 b. 14, H, 6, 15, b. Fitzh, 30, v.

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medietatis Ecclesiæ, or as the cause falleth out, *advocatio tertiæ partis Ecclesiæ*, and the like.

7,E,30.b Fitzh,31,b 14 H.6,15 b.33.H,6. 11,b.5.H,7 7.b.

But *Medietas advocationis Ecclesiæ*, is after partition betweene perceners, for although the Advowson be entire amongst them, yet any of them being disturbed to present at his turne shal haue the writ of *Medietate*, or of *Tertia*, or of *Quarta parte Advocationis Ecclesiæ*, as the case lyeth.

14.H.6,15 b. Fitzh,11 br.39.

Also, if two Patrons of seuerall Churches make vnion; or confederation of their Churches by the assent of all those whose consent is requisite, the Patronage of euery of them shall not be but *medietas Advocationis Ecclesiæ*; because, but one Incumbent is onely in this case to bee presented, and not *Advocatio medietatis Ecclesiæ*.

And this Difference is onely taken and obserued in the writ of Right, which is altogether grounded vpon the right of Patronage. But in the *Quare Impedit*, which is onely to recouer Damages, no such diuersitie is considered, but the writ is generall, *Presentare ad Ecclesiam.*

Lastly, it is to be considered, what temporall profits, value or Commoditie, this kind of Inheritance is reputed to be of: It is not by the Law of God, to be bestowed vpon any Incumbent for any need or price; but onely reserued for such as are worthy thereof. And therefore it is said; *That Guardian in Soccage of an Infant,

29.E.3.5. b.9.H,6.37 a.32.H,6.1 22.a.

fant, shall not present to any Advowson; because such presentation, is not to bee bestowed for price; for that, that such Guardian cannot account for the same, yet neuertheless, because the Patron thereby may aduance his friend, it hath beene often esteemed for Assets in Formedon. 5. H, 7, 36. a. 37. b, 12, H, 8. a.

And as the value thereof may come in question, as in a writ of right of Advowson, where the tenant avoucheth, and the vouchee looseth, the tenant shall recouer in value against the vouchee, for euery Marke that the Church is worth *per annum*, xij.d. So that the thing which of it selfe is not valuable, is by a secondarie meanes made and esteemed valuable; because that otherwise, this mischiefe should ensue thereof, which should be a losse without recompence. 8, E, 3. *Fitzh, recouery in value* 11, & 9.

1 By this it appeareth, that it is an Inheritance Incorporate.

2 That it lyeth in Tenure.

3 That it passeth by the name of Tenement.

4 That a *Precipi quod reddat*, lyeth thereof.

5 That both tenant in Dower, and tenant by the courtesie, and in some case a *Possessio fratris*, may be thereof.

6 That it is entire by nature, though by accidentall meanes otherwise, and in some respect deuisable.

7 Though it be bestowed *gratis*, yet it is valuable, for which it is a benefit to aduance a friend, and for being iniured therein we shall recouer damages.

Lect. 5.

The word of Right, and the word Advowson, explained, and to what inheritance an Advowson may bee appendant originally.

5 IT resteth at this present, for the more ample explication of this word *Right*, (whereas in defining an *Advowson*, wee say it maketh a Right) to set forth the diuisions of *Advowsons*, and to prosecute euery part diuided with a full Discourse; that thereby, what manner of right and inheritance an *Advowson* is, may be the better perceiued.

Advowsons therefore, are either appendant or in grosse, or part appendant part in grosse.

An *Advowson* appendant, is a right of Patronage, appertaining to some corporall Inheritance; so that, hee that hath the same Inheritance, is thereby also intituled to haue the other as annexed to the same; For an *Advowson* passeth alwaies with the Inheritance, to which it is appendant; vnlesse, there bee expresse nomination onely by these words (*Vna cum pertinentijs*,) except it be in case of the King, where the Statute *De prerogatiua Regis*, *cap.* 15. prouideth expresse words to make the same to passe.

33.*H*.6.4. *Lit.*20.*E*. 4.15.*a*. 8.*H*.7.4.*b*.

The originall of *Advowsons* appendant at the begin-

beginning must be in this manner, sythence Patronages were wonne and gotten as before hath beene declared; and that either *ratione fundationis dotationis* or *fundi*, were (as it seemeth by all conformity of reason) the originall foundations of Advowsons appendant; for when Mannors were created, either the land vpon which the Church was built was land parcell of the Mannor, or honor to which it is appendant, and he that was Donor thereof, gaue the same to build the Church vpon, and that the *Advowson* of the same Church so built, should bee appendant to the same Mannor, which is *ratione fundi*. Com, 161, a. 5, H, 7, 6.

Or hee that was owner of the same Mannor or of any such corporall Inheritance, endowed the same Church with parcell of the land of the same Mannor, honor, or such like corporall Inheritance, and gaue the same to the Gleebe, of such Church vpon which the *Advowson* by ordinance of the Ordinary, and by the consent and agreement of all others, whose consents were requisite in this behalfe, was at the beginning appointed to be appendant to such Mannor, Honor, or other corporall Inheritance, in recompence of such liuely hood, and dotation bestowed vpon the Church.

And hereof it ensueth, that if at any time the Church be dissolued, the Gleebe and land vpon which the Church was built, shall returne and 5, H, 7, 37. a, 13, a, 11. E 4 11, v, 20 E, 4, 15, b.

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escheat to him or them from whom it was deriued and deduced.

Fitzh,33.k As in like case, vpon the dissolution of an Abbey, the same shall not returne to the founder of common right, vnlesse some other ordinance be made to encounter the same.

1 Therefore to auoyd confusion in the consideration of Advowsons appendant; let vs first see, to what sort of Inheritance Advowsons may be properly appendant.

2 Secondly, in what manner it is appendant, (that is) if it be part or parcell of the Inheritance to which it is appendant, or if as accident or necessarie thereunto.

3 How it may be seuered from his principall; and againe, by what meanes it may be thereunto recontinued againe.

1 As to the first, it may bee appendant properly and originally, to things that are onely Inheri-

Com,170,v tances corporall, that are compound; As to an

30,H 7,19 Honour, Earledome, or such like; likewise, to a Castle, more vsually to a Mannor; all which principall things, that is to say, the Earledome, Honour, Castle and Mannor, &c. are Inheritances compound, made and combined of diuers things, and in nature different, being those which the Logicians call *Tota Intigratia.*

2 It may bee appendant to an Acre of Land, or to a Messuage, to a Rectorie, Parsonage, Church or such like; And so one Church may

be

be appendant to another, of which we shall take occasion to speake in the Lectures following.

But at this present, let vs see in what sort it may be appendant to a Mannor.

Advowson that lyeth in one Countie, may be appendant to a Mannor that lyeth in another Countie; And how two or more *Advowsons* may be appendant to one Mannor, may be manifested thus. 33, H. 6. 4 b. lib. vlt. 34 E. 3. Quare Imp. Fitzh. 10.

If hee that in ancient time was seised of a Mannor, that extended so large as it was diuided into diuers Parishes, the Lord of the same Mannor, eyther gaue out of the same Mannor land to build, or to endow euery of the Churches, and so euery of them might be appendant to the same Mannor.

How one *Advowson* may bee appendant to two Mannors, may likewise thus appeare.

Suppose that *A.* bee Seised of an *Advowson* of the Church of *Dale*, as appendant to the Mannor of *Sale*, and that both those Churches by the Ordinarie, and by the consent of both the Patrons bee vnited, and called the Church of *Dale*, and ordained that the Patrons shall present by turne for euer; these Churches by this vnion and confederation are made one, and so the *Advowson* entyre, and no moities as is betweene Coperceners, joyntenants, and tenants in common; and therefore it is appendant to both Mannors, for the Patrons seuerally presenting, 9. E. 6 5, 9, b. 20. Dyer.

ting, shall present to the same Church as appendant to both Mannors, (that is to say) the one shall present seuerally to the Church as to his Mannor of *Dale*, and the other also shall present thereto when his turne commeth, as appendant to the Mannor of *Sale*.

14, H, 6 25 b, Fitz. 39. Yet some are of opinion, and some authorities there are, that each of the same Patrons after the same vnion, is seised *De medietate Advocationis Ecclesiæ*.

And in what manner soeuer the same *Advowson* be entire, yet is the Parsons intrest seuerall; For if such Incumbent, which is presented after such vnion made, graunt a rent charge out of the Glebe, and one of the Patrons onely confirme, no Distresse (after the death of the Incumbent that granted the rent) can bee taken vpon the Glebe, that belongeth to the Glebe of the other Patron, to make the same subiect to the charge in perpetuitie; for that, that hee confirmed not.

32, H, 6, 64, b. But if the Mannor of *Dale*, bee holden of the Mannor of *Sale*, and to the Mannor of *Dale* is an *Advowson* appendant, and that the Mannor of *Dale* hath Escheated to the Mannor of *Sale*, so that the Demeanes of the one is become parcell of the Demeanes of the other; yet the *Advowson* shall bee still said appendant to the Mannor of *Dale*, as it was at the first; And the Mannor of *Dale* shall continue still in reputation a

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Mannor, in respect of such things as are appendant thereunto.

The moitie of an *Advowson* may bee appendant to a Mannor, or parcell of a Mannor. 33, *H*, 6, 11. 12, *a*,

Also, in the pleading of a case in *Ed* 6. by *Dyer*, it appeareth that one fourth part of an Advowson was alledged to be appendant to the one moitie of a Mannor, and another fourth part of the same Advowson was appendant to the other moitie of the same Mannor, and the other two parts were in grosse: yet neuerthelesse an Advowson (in euery such or the like cases) cannot be said to be diuided properly, for that, that it is entyre, if you respect the presentation and not the right of Patronage. For if a man hath an Advowson and giueth one part thereof to *A.* and the other part to *B.* & one third part to *C.* yet the Advowson remaineth entyre amongst them, and if any of them disturbe his companions they are without remedy, for that they ought to joyne in a *Quare Impedit*, because the presentation is a partonail thing, and entyre, wherein they ought to agree, but seeke how they can seuer in these causes in a writ of Advowson. 6, *E*, 6 74. *b* 44, *Dyer*.

Moreouer, as touching the right of Patronage, if one bring a writ of right of Advowson, and the tenant pleadeth that the demandant is seised of one sixt part, or of some one part of the Advowson, the entyre writ shall abate, notwithstanding if it be in barre but for parcell, be-

cause the Advowson is entyre, and not seuerall, by reason whereof the demandant cannot abridge his demand.

And as in the cases aforesaid it hath appeared, that an Advowson of a Church may bee appendant to a Mannor, in like manner may the Advowson of a Pryorie bee appendant to a Mannor.

81,E,3,15

Lect. 6.

To what things an Advowson may bee appendant secondarily.

IN the Lectures aforesayd, was shewed, to what sort of Inheritances an *Advowson* may bee appendant originally; Now it remaineth to show to what things it may bee appendant secondarily.

An *Advowson* therefore cannot bee appendant to one acre of Land, or two acres, but onely to such parcels of land as haue beene parcell of a Mannor, or parcell of an Earledome, Castle, or such like Inheritance, to which an *Advowson* may bee appendant originally; But in what order the same may bee appendant to one Acre, let vs consider; some bee of opinion, that if a man bee seised of a Mannor to which an *Advowson* is appendant, giueth certaine acres of the

41 H,4. Fitzh 88

33.H.6 5.a fine.

5,H,7,10,a Fitzh,feoffments and feof,115.

the ſame Mannor, *vna cum Advocatione* to another, in ſuch a caſe the *Advowſon* ſhall not paſſe to the grantee, vnleſſe the ſame be by Deed, and ſo the ſame ſhal be appendant to the ſame acres.

So likewiſe, ſome hold opinion, that if a man be ſeiſied of a Mannor, to which an *Advowſon* is appendant in right of his wife or joyntly with his wife, and maketh a Feofement in fee of certaine acres parcell of the demeanes of the ſame Mannor *vna cum Advocatione*, and dyeth; that the Wife notwithſtanding this, may preſent to the *Advowſon*, before ſhe recontinue the ſame acres, by *Cui in vita*; becauſe (as they thinke) the ſame *Advowſon* is not appendant to the ſame acres, and ſuch alienation is not but during the life of the Husband. 17.E.3.45 18,19,21, 22,E.3.6.b 7.a.Thorpe.

Neuertheleſſe, I doe not perceiue any great reaſon, why the Law ſhould be ſo in ſuch a caſe; for if a tenant in tayle of a Mannor, to which an *Advowſon* is appendant, aliene ſome of the ſame acres parcell of the Mannor, together with the *Advowſon*, although it bee without Deed, notwithſtanding it is appendant to the acres, and cannot bee recontinued but by Formedon to be brought for the ſame acres, which caſe in reaſon, being like to the Formedon of the acres and Advowſon aliened by the Husband, I know not any difference of Law that ſhould bee betweene them; and therefore, if a man be ſeiſied of a Mannor to which an Advowſon is appendant. *Fitzh.* 32.A 43.E.3 26. b, or v.Thor.

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dant and make a leaſe for life of the ſame Manor, *vna cum advocatione*, if the leſſor enter into the ſame Acre of land for forfeiture, he hath recontinued the *Advowſon*, as appendant to the ſame Acre.

17 *F* 5.*a*, *Mombray.*

Com 170,*b* 16 *H*.7.13 ,*&* 9,*b*.

An *Advowſon* cannot Originally bee appendant to a Meſſuage, but Secondarily it may; therefore if an *Advowſon* be appendant to a parcell of land, which was ſometimes part of the demeſnes of a Mannor and ſuch like, if a Meſſuage be built vpon the ſame parcell of land, the *Advowſon* ſhall be appendant to the ſame Meſſuage, and if the ſame Meſſuage fall or bee pulled downe, the ſame *Advowſon* ſhall bee againe appendant to the Soyle, as it was before.

17 *E* 3.51*a* 20,*E*.4 6.*b* 11,*H*,6 32*b* 5,*E*,2. *Qu*, *Imp* 165.*&* 171 7 *E*.3 12.*a* 51.*a*. 16,*E*,3,*m*, *defaits*, 11, 6,5,*E*,3 16 *b*,11,*H*,6,8 *b*, 31,*H*,6, 14 *a*,*Fitzh*, 33,*v*.*t*,34, *&* 35,*f*.

So likewiſe, an *Advowſon* may by a ſecondary meanes be appendant to a Rectorie, for Vicaridges being not firſt erected (in as much as the Subſtitute cannot bee before the principall) but all at the beginning were Parſonages, of the which Vicaridges were derived, and that for the moſt part, by the reaſon of many Impropriations of Benefices, to the houſes of Religion, and Spiritual corporations, which were not of themſelues in all points fit for the function and cure of ſoules.

The reaſon is, becauſe that an Advowſon of a Vicaridge ſhould bee alwayes appendant to the Rectorie of a Parſonage, ſo that he that

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is Parson, or *Persona imperſona*, (as they call him) of this Church, is of common right Patron of the Vicaridge, of the ſame Church; except, ſome other ſeuerall ordinance at the beginning of the endowment of the ſame Vicaridge were made to the contrary.

And therefore, by the graunt of a Parſonage with all the hereditaments thereto belonging, the *Advowſon* of a Vicaridge paſſeth to the Grantee. 2.E.3d Grants, 89. & 56, Dyer 35, 7, E.4. 61.a, 75.a.

In the ſame manner it ſhould be, if the Vicaridge were endowed, ſo there be a Parſon and a Vicar both preſented into one Church, as by the Law there may well be; but if the Vicaridge become voyd, and hee that is Parſon hauing the *Advowſon* of the Vicaridge (as of common right hee ought) preſent one to the ſame Vicaridge by the name of Parſon, who is admitted and Inſtituted accordingly, by ſuch preſentation hath the ſame Vicaridge loſt the aforeſaid name, and is becommed a Parſonage, *tamen quere* if the firſt Parſonage remaine, and if one of thoſe parſonages (if they both continue) be appendant to the other; but it ſeemeth by the Booke of 11. *H.6.* that there ſhould be but one Parſonage, and the Vicaridge extinct. 11.H.6.18 a. & 32 b. 17.E.3.51.a 11.H,6.18 & 32.b. 11,H,6.18 & 22.

An *Advowſon* of a Church or Chappell, cannot originally bee appendant to another Church or Chappell; for that, that things of 8,H.7.16. Com.169.b

one nature cannot be originally appendant each to other. But notwithstanding, secondarily the *Advowson* of a Church or Chappell may be appendant to another Church or Chappell.

43. E. 3. 30 a. Fitzh. Qu. Jmp. 13

As if the *Advowson* of a Church or Chappell bee appendant to one Acre of land, that was sometimes parcell of a Mannor, or such like; and after a Church or Chappell bee built vpon it, the last new erected Church shall bee appendant to the aforesaid Church.

33. E. 3. Fitzh. aid le Roy, 103.

An *Advowson* may be amortified to a Church or Chappell, and if it be recouered and lost by Default, the parson thereof may haue a Writ of right.

Ibid. Fitzh. 103.

And an *Advowson* may be parcell and part of a Deanerie, and if the same bee in any free-Chappell of the King, if the Deane be impleaded, he may of this haue ayde of the King. And thus much concerning Inheritances, to which an *Advowson* may be appendant.

Lect. 7.

In what manner Advowsons are appendant to a Manner.

NOw it resteth, that I determine in what manner *Advowsons* are appendant. And first of all, if the *Advowson* be part or parcell of the Inheritance, to which it is appendant, and whether it bee onely accident or incident thereunto. 1.

Secondly, if an *Advowson* be appendant to a Mannor, that consisteth of Demeanes and seruices, in respect both of the demeanes and seruices, or if it shall be said appendant to a Mannor in respect onely of the Demesnes, in as much as the Demesnes are one corporall Inheritance, and such part of the Mannor as onely lyeth in manuell occupation. 2.

1 As concerning the first, the Authorities of our Bookes are diuersly deuided, some tending to one effect and some to another, our best course therefore is to consider the Arguments, and to giue censure with that which seemeth most agreeable with Law. Some hold that an *Advowson* appendant to a Mannor and the like, is eyther part or parcell of a Mannor, Honour, &c. or other Inheritance to which it is appen-

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dant. And they ground themselues vpon the authorities of 43 *R.* 3. 22. *a. b.* where it was adjudged that the grant that King *H.* the 3. made to *Thenel Marshall* of a Mannor, to which an *Advowson* was appendant, without these words (*cum pertinentijs*) and without any mention of the *Advowson*; yet notwithstanding, the *Advowson* passed in case of the King before the statute of *Prærogativa Regis, Cap.* 15. And so likewise it is in the case of a common person at this day, although in the 8. *H.* 7. 4. & the opinion of some others, in the 5 *H.* 7. 38. *b.* be against it, vpon which they inferre, that an *Advowson* is parcell of a Mannor, for so expressely is the opinion of others in the same booke of 5. *H.* 7. 38. *b.*

Ratio. 1.

22. *H* 6. 33 *lib. fund. leg.* 70.

Secondly, in the 9. *H.* 6. 28. *b.* and in the 38. *H.* 6, 33 *a.* in the Abbeyes of Scyons case, the difference is agreed for Law, that if the King be seised of a Mannor to which an *Advowson* is appendant, and granteth the same Mannor, and in the grant the words of the Pattent are *dedimus & concessimus*, the Mannor of *D.* expressing not the *Advowson* in the clause of the grant, if afterward in the *habendum* there bee, *habendum cum aduocatione* of the Church of *D.* the *Advowson* passeth by such grant, although it be not comprehended in the clause of the grant; but if the King grant the Mannor of *D.* to which no *Advowson* is appendant *habendum cum aduocatione Ecclesiæ de S.* this *Advowson* passeth not; for that,

Ratio. 2.

9. *H.* 6. 28, *or* 8. *b.*

38. *H.* 6, 33 *a.* 39. *b.*

that, that it is mentioned after the grant, the reaſon of which difference they thinke to be, becauſe in the firſt caſe, the aforeſaid *Advowſon* appendant is parcell of the Mannor, which is not ſo in the laſt caſe in the 8. *H.*7. 3. *b.* and likewiſe in the 10. *H.*7. 19. *a.* it is ſaid, that an *Advowſon* appendant is a compound thing, to the compoſition whereof, diuers things are requiſite, al which things commixt, make the Mannor and euery of them is parcell thereof, for as Rent cannot be Land, ſo Land cannot bee an Advowſon *nec econuerſo*, yet euery of theſe things of diuers natures, make the Mannor, and are parcell of the Mannor, ſaith *Keeble*. 10. *H.*7. 19 *a*, Keeble.

Ratio. 3.

And if a man demand a Mannor by his Writ and an Advowſon is appendant thereunto, hee ought to make an exception of the Advowſon, which ſeemeth to prooue that an Advowſon is parcell of a Mannor, vpon the other part thoſe which affirme that an *Advowſon* is not parcell, but onely appendant to the Mannor, denyeth that an Advowſon lyeth in Tenure; for that, that only the principall thing is holden, and not the thing appendant to ſuch principall; As Leates, Courts, Eſtreates, Wyaſes, and the like, for (ſaid they) if an *Advowſon* appendant be by grant ſeuered from the Mannor, it is holden by ſuch and the ſame ſeruices as it was holden by before, for that, that if the *Advowſon* be ſeuered it ſhould be holden *properticula*, thē the Ser- 5 *H.*7 36, *a* & 38, *a*

vices should be encreased, and so double Services should be due for one thing, for so he should haue the entyre seruices for the Mannor, and also Service for the *Advowson* beeing seuered, which is repugnant to reason.

In this varietie of opinions; I thinke it were most conformable to reason, to say that an *Advowson* is not part nor parcell of a Mannor, but rather appendent to a Mannor, for the better entendment whereof, the Law of *England* calleth those sorts of Inheritances which are annexed to others, and what the Logicians call
4.E.4.36.b *Adunctia*, by these names, that is to say; Incidents, appurtenants, appendants, and regardants, of which termes of Law (*Regardant*) is properly of *Villeines*, and the word (*Appendant*) of a Common or an *Advowson*; of which two an Advowson is separable, but a
Lit.184. common appendant is not in any case separable, for none can haue common appendant, but hee onely that hath the Land to which the common
9.E.4.39.b appendant is appendant. The other two words
5.H.7. *Incidents* and *Appurtenances*, may generally bee affirmed of all those sorts of Inheritances that may in any manner bee annexed to other things, for so a Mannor with his appurtenances,
5.H.7.4.b may be intended of Advowsons, Commons, Villeines, Waises, Estrayes, and the like, which are said to be Appurtenances to a Mannor, likewise the word *Appurtenant* may be applyed to a Court,

Court, Messuage, or Gardein, that are said to be appurtenant to the Messuage, the word incident properly signifieth those things annexed which are not knowne by the precedent names of appurtenants or appendants, and yet are notwithstanding annexed to other Inheritances, and in such sort a Court-baron is incident to a Manor, a Court of Pipowders to a faire, fealtie to Homage, homage to Escuage; so likewise a *Corrody* is incident to a Foundership; and againe, of those some are seuerable, as the Corrodie from the Foundership, some are insseuerable. as the Court-barron from the Mannor, except onely in case of the King, who hath power to seuer them. But that is called a part or parcell, which is a portion, and required to some composition of entyre and compound things, as the Demeanes and services are part of a Mannor, the Gleebe and the Tythes are part of the Rectory, so that these are not to be called Incidents, Appendants, Appurtenants, but parts and portions of these compound things, of which they are said to be part, parcell, or portions, and are required necessarily, to the framing of such entyre thing, of which they are parts and portions, & hereof it followeth that an *Advowson* appendant is not any part, parcell or portion of a Mannor, no more then a common is part of that thing to which it is appendant, so that the word it selfe of an *Advowson* appendant is sufficient

21 E. 4. 32. b
19. Ass. 10
8. H. 7. 6. 1.
E. 4. 10. A. 18
H. 7. 12, b
11, H. 6. 81
21. Ass. 53.
Br. insid. 34
12. E. 288.

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to ſet forth and declare the ſame, to bee no part but appendant onely, as the words importeth,

1. *Reaſon Anſwered.* Wherfore the firſt reaſon of the aduerſe part may thus be anſwered. The bookes before mentioned namely, 43. *E.* 3. 22. *a.* 45. *E.* 3. 12. *b.* 22. *H.* 6. 33. *a.* which are to this effect, that an *Advowſon* appendant may paſſe by the grant of Manor without ſaying (*cum pertimentijs*) in the caſe of a Common parſon, and ſo likewiſe in the caſe of the King before the Statute of *prerogatiua Regis*, proueth not that an *Advowſon* is part or parcell of a Mannor, for this being a thing appendant may aſwell paſſe with the words (*cum pertimentijs*) as the things that are parts or portions of the ſame entyre thing paſſeth.

Fitzh. 181. For if a man grant common of Eſtouers to be burnt in ſuch a Mannor, of the grantee by the grant of the Mannor this common paſſeth, without the words *cum pertinentijs*, for by the feofment made of the Mannor without dead, all appurtenances paſſe by *Finchdens* opinion, as *Fitzh.* abridgerh it, although it be not in the report at large, and for the argument of thoſe in the time of *Hen.* the 7. before remembred, wee ſay for that, that an *Advowſon* appendant paſſeth by the grant of the Mannor it is no good conſequence, for the reaſon aforeſaid.

44 *E.* 3, *bre*, 581,

5. *H.* 7. 37. *b.*

9. *H.* 6. 28. *b.* 33. *H.* 6. 39. The ſecond reaſon anſwereth the difference in *H.* 6. where the *Advowſon* is granted before the *habendum* and where not, that it is not any

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proofe that the *Advowson* appendant is parcell of the Mannor, for *Pryſot* ſaith, that things in groſſe or ſeuerall being named after the *habendum*, cannot paſſe with the firſt things ſpecified in the clauſe of the Graunt, but things appendant or appurtenant to the premiſſes of the Grant may very well paſſe; although the appurtenants be ſpecified after the *habendum*. 38. *H.* 6. 38. *a.*

As concerning the exception of an *Advowſon* appendant to be made in the Demaund of a Mannor, the ſame is not any proofe, that the *Advowſon* is part of the Mannor, for the opinion of *Stone* is, that by the Demeſnes of a Mannor, or by the Demeſnes of the moitie of a Mannor, (as the caſe is there) without the words *(cum pertinentijs)* the *Advowſon* appendant cannot be recouered. 3. *Reaſon Anſwered.* 19. *E.* 3. *Fitzh. br.* 884. *Regiſt.* 228. *br. incid.* 38.

Lect. 8.

If an Advowson appendant that consists of Demesnes and Seruices, shall bee appendant in respect of the Demesnes onely, or in respect of the Demesnes and Seruices.

AT this present it remaineth, to determine if an *Advowson* appendant to a Mannor is appendant, in respect that it consisteth of Demesnes and Seruices; or if it shal bee appendant to a Mannor, in respect of the Demesnes onely, in as much as the Demesnes are one corporall Inheritance, and such part of the Mannor, as onely lyeth in manuell occupation.

This question was of late time largely disputed, & at the last, vpon graund deliberation learnedly determined, in the *Common Pleas*, in a *Quare Impedit*, betweene *Gyles Long* Plaintiffe, and one *Hening* Patron, the Byshop of *Gloceſter* as Ordinarie, and *Hadler* as Clarke, and the same is there among the Rolles of *Pasche* 31. *El. Rot.* 2024. which I haue set heere necessarily in briefe, and being thus:

P. 39. 39. Eliz. Rot. 2024. Longs case, in Com. bank:

A Feofement in Fee was made of the Mannor of *Frembillet*, and the Advowson thereto belonging, and Liuery of Seisin was made in the

the Demesnes, in *anno*,7. *El.* and after in *anno* 17. of her Reigne the Advowson was granted to one *Ranger*, and after in the 25. *El.* one *Boyter* being tenant of the same Mannor attorned to the Feoffee, then the Church became voyd, and if the Feoffee or the Grantee should present was the question, for the better entendment whereof, wee will first see what can bee said vpon both parts.

That it is appendant onely in respect of the Demesnes, those or the like authorities or reasons may bee produced.

It is said, that an Advowson appendant to a Mannor, cannot be appendant to a Rent, or Service of the same Mannor, but onely to the Demesnes, whereof onely if a man hath a Mannor to which an Aduowson is appendant, and granteth the Demesnes *cum pertinentijs*, the Advowson passe appendant therevnto; so likewise, if he grant the Demesnes, excepting the Advowson, the Advowson is now becommed in grosse. 5 *E.* 6. 70. *Pl.* 41. *Dyer*

If a man should haue a Mannor, and blacke acre that was holden of the same Mannor Escheateth, so that the same Acre is become now parcell of the Demesnes, of the same Mannor, if hee that is so seised of the same Mannor, grant all the Demesnes, excepting blacke Acre, and the same Advowson, the Advowson is become in grosse, and yet it is a Mannor notwith-

ſtanding, for now blacke acre is onely the Demeſnes which together with the other ſeruices cauſe the Mannor to continue, neuertheleſſe the *Aduowſon* is become in groſſe, for that, that it was appendant onely to the Demeſnes of the Mannor, which were aliened, and cannot now be appendant to blacke Acre: becauſe it was neuer before appendant to the ſame, in as much as appendancie is onely granted vpon continuance and preſcription, and not vpon the ſame reaſon.

If hee that is ſeiſie of a Mannor, whereof blacke acre is holden, and the ſame Eſcheateth, and he granteth the ſame blacke acre, (*vna cum Aduocatione*) the *Aduowſon* paſſeth not appendant to the acre, but in groſſe, as aforeſaid; but if in the two aforeſaid caſes, a man were ſeiſie to a Mannor before the Statute of *Weſtminſter* the third, *De quia emptores terrarum*, with an *Aduowſon* thereto belonging, and giue certaine acres parcell of the Demeſnes of the ſame Mannor to diuers perſons, to bee holden of the ſame Mannor, if afterward ſuch acres Eſcheate, and the Lord granteth the reſidue of the Demeſnes excepting the acres ſo eſcheated, and the *Aduowſon*; the *Aduowſon* is ſtill appendant to the ſame Mannor: becauſe it was appendant to the ſame Acres, before they were giuen to bee holden of the Mannor.

If a man were ſeiſied of a Mannor to which

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an *Advowſon* is appendant, and before the Statute of *Weſtminſter* the third were likewiſe ſo ſeiſied of other acres of land in groſſe, and not parcell of the ſame Mannor, if he had giuen the ſame acres of Land to diuers perſons to bee holden of the ſame Mannor, (as he might then haue done) and after the ſame acres of Land eſcheated, now are they parcell of the Demeſnes of the ſame Mannor, although they neuer were ſo before, and after the Lord of the Mannor granted all the ancient and former Demeſnes of the ſame Mannor vnleſſe one acre, this acre and the other acres Eſcheated maketh now the Demeſnes of the ſame Mannor, and the *Advowſon* appendant, is ſtill appendant to the whole Mannor, but yet it was ſo appendant in reſpect of the one acre, that was parcell of the ancient Demeſnes of the ſame Mannor, and if the Lord intend at any time to ſeuer this, from the Mannor, and ſtill to keepe it appendant to no acre, but onely to that which was parcell of the Demeſnes of the Mannor, all which reaſons prooue that the *Advowſon* is appendant more in reſpect of the Demeſnes then otherwiſe.

Of the other part, thoſe caſes proue that an *Advowſon* appendant to a Mannor is not appenpant to any part of the Mannor, but to the entyretie, for it is an intyre thing; and therefore if a man hath a Mannor to wch an *Advowſon* is appen-

dant, if he Enfeoffe *I. S.* of the same Mannor, and maketh Liuerie of the Demesnes, and before the Attornement of the Tenants, the Church becomes voyd, the Feoffee shall not present; because he hath not the Mannor to which the Advowson was appendant: but if the tenants afterward attorne within sixe moneths, after the auoydance he may very well present therevnto.

So likewise in the former case, if the Feoffor or the estranger present before the Attornment of the Tenants, yet if afterward attornment be had within the sixe Moneths after the avoidance, the Feoffee may bring and maintaine his *Quare Impedit*, and so recouer his presentation, which proueth that the Advowson is appendant to the whole Mannor, as it is entyre, and not by reason of the Demesnes onely, for the determination of the Law in this; It is true that the Advowson in such case is appendant to the entyre Mannor, and not to any part thereof, during such temps, as it remaines a Mannor without alteration, or dis joyning the Advowson from it; neuertheless, if you will dissolue the Mannor and seuer the Advowson from it, and yet desire to haue the same appendant, then it cannot be appendant to any part of the Mannor, but onely to such Lands as were of the ancient Demesnes of the same Mannor; wherefore in the first case, Iudgement was giuen, that after the Attornment had, the Advowson

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paſſed to the Feoffee of the Mannor, as appendant to the entyre Mannor, and that the Graunt made in the meane time betweene the liuerie of the Demeſnes, and the attornement of the Tenants, was voyd, and that the Advowſon paſſed not thereby to the ſame Grantee of the Advowſon, but is (by the Attornment, by which the ſeruices paſſed) made appendant to the entiretie in the hands of the Feoffee.

Lect. 9.

How an Advowſon may bee ſeuered from the principall, and by what meanes it may be reconnexed thereunto againe.

IN the two laſt former Lectures hath beene declared at large; Firſt, to what kind of Inheritance an *Advowſon* may bee properly appendant, and then in what manner, it may be appendant: Now remaineth the third thing then treated of, that is to ſay, how it may be ſundred from the principall; and againe, by what meanes it may be thereto annexed by Entrie or without entrie into its principall.

It may bee ſundred eyther rightfully or by a rightfull conueyance, of which wee ſhall ſpeake more at large when wee declare the nature of an *Advowſon* in groſſe, and of that which is partly

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in groſſe partly appendant, whether it may bee ſundred i n a wrongfull manner, as by a *tortious act*, that is to ſay, by Diſſeiſin of the Mannor, to which it is appendant, or by a wrongfull aſſurance as by diſcontinuance, or other wrongfull diſpoſition thereof. As for vſurpation wee ſhall ſpeake thereof in a place more conuenient afterward at large, if therefore a man be diſſeiſed of a Mannor to which an *Advowſon* is appendant, and the *Advowſon* becomes voyde the Mannor ſtill remaining in the hands of the Diſſeiſor, this was ancient Law as *Bracton* ſaith, that he ſhould not haue preſented to the *Advowſon* vntill he had recontinued or made his entrie into the Mannor, becauſe ſaith he, *Quod ſeſinam habere non poterit quis de pertinentijs, antiquam acquiſeret principale.* But at this day the Law is contrary, ſo that if a man be ſeiſie of a Mannor, and the entrie of the Diſeiſee being lawfull, the *Advowſon* becommeth voyde, the Diſſeiſee may preſent to the Church, before his entry into his Mannor, but if the Diſſeiſor bee ſeiſie of a Mannor by diſſeiſin, to which an Advowſon is appendant, and the Church becomes voyd, ſo that the diſſeiſor preſenteth, whereupon the Clarke is admitted Inſtituted and Inducted, it ſeemeth that the diſſeiſee in this caſe ſhall not haue his *Quare Impedit*, to recouer his preſentation, vnleſſe he firſt enter into the Mannor to which the Advowſon was appendant, and though hee en-

Bracton. lib. 2. fo. 55. C. 23.

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ter, yet he shall be driuen to his action.

Yet if a man be seisie of a Mannor, to which an *Advowson* is appendant and bee disseisied of the same Mannor and the Church becomes void, and the Disseisor presenteth one that is admitted, Instituted, and Inducted, and so continueth parson sometime after, if afterward the *Advowson* become voide, now is not the *Advowson* so gained by such vsurpation, but if that I that was deseisied enter into the Mannor I may againe present to the *Advowson*, because the former vsurpation was a meane betweene the disseisin and the reentrie, by which reentrie the Disseisors estate as well in the *Advowson* as in the Mannor, is clearely defeated. But it is otherwise of an *Advowson* in grosse, in which case the Patron shall be driuen to his Writ of right, so likewise if I be seisie of a Mannor, to which an *Advowson* is appendant, and afterward the Church becomes voyd, and I present and be disturbed, and after I be deseisied of the Mannor, here I shall bring my *Quare Impedit* and recover my presentation, before I enter into the same Mannor.

And so much is said, where the entrie of him that hath right is lawfull in the principall, but where the entrie is not lawfull there he shall not present to the *Advowson*, vnlesse recontinuing the principall; and therefore if a man bee seisied of a Mannor to which an *Advowson* is appen-

dant, and be diſſeiſied, if the Diſſeiſor dye ſeiſied, and the Church become voyd, the diſſeiſſee ſhall not preſent to the Church, vnleſſe hee firſt recover the Mannor.

If Tenant in tayle bee ſeiſied of a Mannor, to which an *Advowſon* is appendant and maketh diſcontinuance of the ſame Mannor, and after dyeth, if the Church become voyd the iſſue in taile ſhall not preſent therevnto, vntill hee hath recovered the Mannor by Formedon to which the *Advowſon* was appendant.

Likewiſe if a man bee ſeiſied of a Mannor in right of his wife, &c. and both diſcontinueth the Mannor with the *Advowſon*, and the Husband dyeth, if afterward the Church become voyde, the wife ſhall not preſent vntill ſhee hath recontinued the Mannor by *Cui in vita*, but foraſmuch as the Statute of the 32. *H.*8. 28. giueth in ſuch caſe power to the wife, or her heires, to enter into the Land ſo aliened.

The Law at this preſent day, muſt of neceſſity bee taken, that the Wife or her heires in the former caſe may preſent, without recontinuance of the Mannor, for that, that the ſame Statute ordained then, that ſuch alienation &c. Feoffement act or acts, made or done by the Husband, ſhall not bee nor make in any manner any diſcontinuance thereof, or be preiudiciall to her or her heires.

The former rule hath an exception in this manner,

ner, yet notwithstanding the entrie being not lawfull in the principall; yet if the *Advowson* be severed, and in any manner cannot bee recovered, then may the party wronged notwithstanding present without recontinuance of the principall; As if a man before the Statute of the 32. *H.* 8. 28. be seised of a Mannor in right of his Wife, to which an *Advowson* is appendant, and giueth to an Estranger the same Mannor or parcell thereof with the *Advowson* in fee, and dyeth afterward, the Church becommeth voyde, and the Estranger presenteth and then Alieneth the Land to another in fee, sauing the *Advowson*, and now the Church becomes voyde, the wife in such case may present to the Church without any recontinuance of the Land discontinued to which the Advowson was appendant.

Quære therefore in the 5. *H.* 7. 37 where it is holden that if there be tenant in tayle of a Mannor to which there is an *Advowson* appendant and he alieneth the Mannor, with the Advowson in fee, and the Discontinuee granteth the Advowson to another in Fee, severing it from the Mannor; the issue in tayle shall not present vntill such time as hee hath recontinued the Mannor, neuertheless if a remitter bee of the principall, hee that is so remitted may present to the Advowson the next time that it becommeth voyd, notwithstanding any vsurpation thereof before had: For if Tenant in tayle bee of a

Mannor to which an Advowſon is appendant and diſcontinueth the ſame, and the Diſcontinuee granteth the Advowſon to another in fee, and afterward reenfeoffeth the tenant in tayle of the Mannor, who dyeth ſeyſed of the Mannor, now his heyre ſhall preſent to the Advowſon when it becommeth voyde; and if hee be diſturbed hee ſhall haue a *Quare Impedit*, becauſe hee is remitted to the Mannor, and hath not any remedie otherwiſe to come to the *Advowſon*.

But vpon the other part if tenant in tayle bee ſeiſie of a Mannor to which an *Advowſon* is appendant and diſcontinueth the ſame, and afterward the Church becomes voyde, and the tenant in tayle preſenteth to the Church by vſurpation, it ſeemeth by the better opinion, of the 5. *H.* 7. 36. 38. that hee is not remitted to the *Advowſon*, for that, that his ancient right therevnto was as to an *Advowſon* appendant, but now it is in groſſe; But if the tenant in tayle had aliened the ſame to an Eſtranger in fee, and after dyeth; notwithſtanding that, hee take the rents and ſervices, that afterward diſcendeth to the Iſſue, yet is the iſſue therevnto remitted; becauſe ſuch rents and ſervices are parcell of the Mannor and not appendant.

And ſo it was likewiſe before the ſaid Statute of 32. *H.* 8. if a man bee ſeiſie of a Mannor which is an *Advowſon* appendant in

right

right of his wife, and diſcontinueth the ſame Mannor, and after the Church becomes void, and he preſenteth to the Church by vſurpation, and dyeth; hauing iſſue by the wife, and the wife alſo dyeth, the iſſue in this caſe is not remitted to the Advowſon, for the reaſons before ſhewed; hereof it enſueth likewiſe, as before partly hath appeared, that in all caſes where there is a Mannor, to which an Advowſon is appendant, and the Mannor with the *Advowſon* is aliened with wrongfull conueyance, and the entrye of him that hath right is not taken away, there may hee preſent to the Church without recontinuance of the Mannor, to which the *Advowſon* is appendant; and therefore if a man make a leaſe for life of a Mannor to which an *Advowſon* is appendant, if the leſſee for life make a Feofment in fee, of the Mannor and *Advowſon*; and after the Church becommeth voyd, the leſſor may preſent to the Church, without any entrie made into the Mannor, becauſe his entrie was lawfull into the Mannor. But if it be a rightfull purchaſe, that requireth ſome other act to be done, for the execution and perfection of the ſame, then cannot the perfection thereof bee accompliſhed in the acceſſarie, that is to ſay, in the Advowſon before the ſame bee performed in the principall; wherefore it is holden by the better opinion in the 9. *E.* 3. 43. 839. that where a

certaine Chamber was exchanged for certaine Acres of land, with an Advowſon appendant to the ſame acres of Land: to perfect this exchange, hee that had the acres and Advowſon in exchange, could not preſent to the Advowſon vntill he had made his entrie into the acres. And thus much hath beene ſaid, how an Advowſon appendant may bee ſeuered from the principall, and againe recontinued with re-entrie, or without entrie into the ſame.

Lect. 10.

Of Advowſons in Groſſe.

AS concerning our firſt purpoſed Diuiſion, to be eyther appendant or in groſſe, or partly appendant, or partly in groſſe; I haue before proſecuted the firſt part, that is to ſay; The natures of *Advowſons* appendant, now therefore it reſteth to ſpeake ſomewhat of *Advowſons* in Groſſe.

The originals of *Advowſons* in groſſe, ſeemeth to be grounded vpon two occaſions; The firſt is, that *Advowſons* in groſſe at the beginning begun originally by one of the before-ſpecified three manner of wayes; which is, *Ratione fundationis*, for when they were agreed, that hee that founded the Church, and was at the coſt of the

the building thereof, ſhould be Patron thereof; hee cannot be Patron of this by reaſon of any Land or Dotation, by which his patronage might be appendant, but onely by reaſon of the building, which being a Patronage without Land, muſt of neceſſitie bee the originall cauſe of Advowſons in groſſe.

The ſecond occaſion of *Advowſons* in groſſe, was the ſundering and ſeuerance of them from the principall to which they were firſt appendant, and ſo by Graunt or other Conueyance they became in groſſe, which before were appendant; wherefore how they may be ſundred by Graunt, now let vs conſider, and ſee what queſtions in our Bookes haue been moued herevpon. In the 33. *H.* 8. 44. 48. 112. *Pyer* of the Opinion that *Shelly* is, That if a man be ſeiſied of a Mannor, to which an *Advowſon* is appendant and alien one Acre parcell of the Mannor, and by the ſame Deed, after graunteth the *Advowſon*, that the *Advowſon* ſhall paſſe in groſſe; otherwiſe, hee thought the Law to bee as if the Feofment were made of the entyre Mannor; yet this Difference agreeth not with the opinion of *Hill*, who thinketh that in both caſes, the Advowſon paſſeth appendant.

Yet I thinke, If a man be ſeiſied of a Mannor to which an *Advowſon* is appendant, and after granteth by his Deed one Acre parcell of the Mannor, and by another Deed the *Advowſon*, and

and deliuereth both thoſe Deeds at one time to the Grantee, although in conſtruction of Law, both thoſe Deeds are but one Deed; yet the Advowſon paſſeth in groſſe clearely, and not appendant to the Acre.

If a man be ſeiſied of a Mannor with an Advowſon thereto appendant, and graunteth the Mannor to *I.* and *S.* excepting one acre, the Advowſon not being ſpecially ſpoken of, in the Grant, it ſtill remaineth to this Acre excepted; For ſaith *Bracton*, *Si partem fundi dederit quis quamvis cum omnibus pertinentijs ſuis, & partem retinuerit, non propter hoc tranſſertur advocatio ſed cum donatore, remanebit licet minimam partem fundi retinuerit non enim tranſſertur cum aliqua parte fundi niſi ſpecialitur tranſſertur.*

If hee which hath a Mannor to which an Advowſon is appendant giueth one part of the Mannor, with one part of the Advowſon to *A.* and the ſecond part of the Mannor with the ſecond part of the Advowſon to *B.* and the third part of the Mannor with the third part of the Advowſon to *C.* in fee, yet notwithſtanding this Diuiſion, the Advowſon remaineth in common, appendant.

If a Mannor to which an Advowſon appendant is belonging, diſcend to an heire, and if hee grant the moitie or third part of the Mannor *cum pertinentijs*, no part of the Advowſon paſſeth; but if he aſſigne Dower to his Mother,

of

of the third part of the Mannor, *cum pertinentijs*, she is hereby endowed of the third part of the *Advowson* and may haue the third presentment.

If a man bee seised of a Mannor or one acre of Land to which an *Advowson* is appendant, and maketh a lease of the Mannor or acre, for tearme of life, excepting the *Advowson*, the *Advowson* is in grosse and cannot bee appendant to the reuersion of the Mannor or acre.

But if I lease the Advowson for tearme of life, reseruing the Mannor in my hands, yet the reuersion of the Advowson remaineth alwayes appendant to the Mannor, or to the acre of Land.

For if a grant be made by me of a Mannor or acre, with the appurtenances, the reuersion of the Advowson passeth, for the reuersion of an Advowson may bee appendant to a Mannor or acre in possession, but the Advowson in possession cannot be appendant to the reuersion of an acre or of a Mannor.

Also, if a man hath a Mannor to which an Advowson is appendant and alieneth the same Mannor, and excepteth the Advowson, the Advowson is become in grosse, and although hee purchase the Mannor, yet is the Advowson still in grosse; and cannot bee appendant.

But in all these cases some are of opinion that

although the *Advowſon* bee excepted out of the grant of the Mannor, yet neuertheleſſe, it is requiſite to haue a Deed of ſuch grant containing ſuch exception, otherwiſe the *Advowſon* will paſſe with the Mannor.

Lect. 11.

Of Advowſons partly appendant, partly in Groſſe.

HAuing formerly ſpoken of *Advowſons* appendant and in groſſe, now remaineth the laſt member of the former diuiſion to be mentioned, which is Advowſons partly appendant, partly in groſſe.

Such Advowſons as are partly appendant and partly in groſſe, are ſo deemed either in reſpect of the time or in reſpect of the perſons.

In reſpect of the time in this manner, ſome Advowſons there are, that are at one time appendant and at another time in groſſe, and ſo againe may be appendant as occaſion ſerueth. As if a man bee ſeiſied of a Mannor or of an acre of land, to which an *Advowſon* is appendant, and leaſeth the ſame Mannor or acre, excepting the *Advowſon*, the *Advowſon* is now become in groſſe, and yet after the leaſe is ended, ſhall

bee

bee againe appendant as before.

In respect of the parson it may so happen, that an *Advowson* may bee appendant in regard of a proprietor thereof, and that in many cases. One case to begin with, is this, that if a man be seised of a Mannor to which an *Advowson* is appendant, and an Estranger leavieth a fine of the same *Advowson* to him that is now seised of the Mannor and *Advowson*, vpon which fine the said counsee (being still owner of the Mannor and *Advowson*) granteth to the Counsor that hee shall present to the *Advowson* euery second auoydance, by this fine the *Advowson* remaineth in respect of him that hath the Mannor, still appendant to the Mannor as before, but in respect of the Counsor that neuer had interest before, at euery second auoydance it is become in grosse, and he shall present therevnto as to his *Advowson* in grosse.

But if (as he in the former case) hee that was seised of the Mannor had leavyed the fine, (and the Estranger so being counsee) and made such grant to the counsee to present at euery second turne, the *Advowson* had beene totally in grosse; for by the counsance it had beene wholly in grosse, and seuered from the Mannor.

If three bee seised of a Mannor that hath an *Advowson* appendant thereto belonging, and two of them releaseth all their right of the *Ad-*

vowſon to the third, the third is ſeiſied of two parts of the Advowſon as in groſſe, and of the third part as appendant, for that, that the third part, was neuer ſeuered from the Mannor, but if the third dye, all the entyre Advowſon deſcends in groſſe to his Heyre, for nothing was in Ioynture but the Mannor that ſuruiued to the other two, that releaſed, their right in the Advowſon, and no part of the Advowſon can come to them; for that, the ſame was not in Ioynture, at the time of the death of the third Ioyntenant, and alſo becauſe they releaſed their right before.

If two Ioyntenants bee ſeiſied of a Mannor to which an Advowſon is appendant, and the one granteth all his right of the Advowſon vnto another in Fee, this Advowſon is both in groſſe and appendant, and if hee that hath the Mannor, and ought to preſent euery ſecond turne; bring his *Quare Impedit*, he ſhall not ſay that he is ſeiſied of the Mannor with the Advowſon appendant at euery ſecond turne (namely, when there is partition betweene them) to preſent by turne, but ſhall ſay that he was ſeiſied of the Mannor with the moytie of the *Advowſon* appendant.

If a Mannor with an *Advowſon* appendant thereunto, deſcend to two coperceners, and they make ſuch partition of the Mannor, and compoſition to preſent, although the compoſition

poſition be otherwiſe then of right is due, yet is the firſt preſentation to belong to the eldeſt, and the ſecond to the ſecond copercener, &c. and the *Advowſon* remaineth ſtill appendant notwithſtanding ſuch compoſition, to preſent by turne.

But if three Mannors diſcend to three Coperceners, and an *Advowſon* is appendant to one of them, and they make ſuch partition, that euery Copartner hath a Mannor allotted to him, and compoſition to preſent by turne to the Advowſon, now is the Advowſon in ſuch caſe ſevered and in groſſe, in reſpect of the Coperceners.

If a man bee ſeiſied of foure Mannors, and to one of them an Advowſon is appendant and dyeth, hauing foure Daughters, who maketh partition of the Mannors, ſo that everie of them hath a Mannor, out of which partition the *Advowſon* is excepted, this *Advowſon* is in groſſe by reaſon of the exception; yet it ſeemeth if all the other Siſters ſhould dye, except ſhee to whom the Mannor was allotted to which the *Advowſon* was apdendant, that the *Advowſon* ſhould bee againe appendant to the Mannor.

If two Churches bee, and the *Advowſon* of the one is appendant to a Mannor, and the other is in groſſe, and the two Churches hap to bee vnited, and vpon the vnion it is ordained,

that the Patrons shall present by turne, now in respect of him that hath the Mannor, the Advowson shall be appendant, and hee shall present thereunto as to an *Advowson* appendant, but as to the other, hee shall present as to *Advowson* in grosse.

Lect. 12.

What Presentation is, and what is the effect and fruit thereof, and in what manner Presentation and Nomination differ.

IN the aforesaid Lecture or reading hath beene declared such matters as was requisite for the explanation of the word *Right*, set forth in the Discription of an *Advowson*, which word being there put in steed of that which the Logicians call *Genus*, the rest of the words subsequent there likewise expressed, are the Proprieties, effects, and qualities incident to an *Advowson*, thereby to distinguish this Right from other rights so that by such Discription, the nature of an *Advowson* may be fully Deciphered.

An *Advowson* as is said, is *Ius presentandi*, and the power to present is the very fruit, effect, and entire profit of an *Advowson*, which is by the meanes of presentation to preferre and advance our Friend, and Presentation is thus described.

A

A Preſentation is the Nomination of a Clarke to the Ordinarie to bee admitted, and Inſtituted by him to the Benefice voyd, and the ſame being in writing, is nothing but a Letter miſſiue to the Biſhop or Ordinarie, to exhibite to him a Clarke to haue the Benefice voided, the formall force hereof reſteth in theſe words chiefly, *Preſento vobis Clericum meum*, 13. *H.*8. 14.*b*. Therefore in our Bookes of Law, an *Advowſon* is called nothing but a *Nomination* or *Preſentation*, a power to preferre and inable another to haue the Benefice, which notwithſtanding the Patron cannot inioy.

Wherefore if the Nomination of an *Advowſon* be granted *habendum* the *Advowſon*, the *habendum* is ſufficiently purſuant; for although it varie in name, yet it is all one in nature, ſo that the Graunt of the nomination of an *Advowſon*, is in ſubſtance the Graunt of the *Advowſon*. For the profit and commoditie of an *Advowſon* reſteth in the Nomination or Diſpoſition of the ſame: hereof it enſueth, that if a man grant to me an *Advowſon* excepting the Preſentation during his life, ſuch exception is voyd and repugnant to the Graunt. So that the opinion of *Thompton* in the ſecond Commentarie of *Plowden* in the Arguments of *Smith* and *Stapletons* caſe, cannot bee Law; who thinketh that if Tenant in tayle bee of an Advowſon, and hee granteth to one by Fine the nomination of the Clarke

38. *H* 6. 38. *b*. 38. *a*.

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Clarke to the same Advowson when it becom meth voyd, that this Fine shall not bind the Is-sues, by the Statute of the 32. *H.*8.36. Because such Fine is leuyed of a thing intayled, as hee thought; whereby aboue it hath appeared, that the Presentation and the Nomination is one thing, and the fruit and full profit of the Patronage, and therefore such fine is of full effect and force to bynde the issue in tayle, for the Advowsons, and yet if the case aforesaid bee so vnderstood, that tenant in tayle of an Advowson granted by fine the Nomination of the Clarke to one, and his Heyres, so that when the Church became voyd, the grantee and his Heyres should nominate a Clarke to the tenant in tayle and his Heyres, and that hee or they should present the Clarke (so nominated) to the Ordinarie, and the tenant in tayle dyeth, such fine shall not bind the issues in tayle; therefore the fine is not of things intailed, for there is the nomination and presentation distinguished.

The presentation may bee distinguished from the nomination, so, that one may haue the Presentation, and another the Nomination, and so they may bee diuers distinct inheritances. As if I being seised of an Advowson in fee, granteth to *I.S.* and his heyres, that he and his heyres euery time the Church becommeth voyde, shall nominate to mee a person to bee presented to the same Church, which person so nominated, I or my

Heyres

heyres ſhall preſent to the Ordinary of the place to be admitted accordingly, into the Church. And a queſtion hath beene moued hereupon who ſhall be ſaid Patron of the ſame Church, ſome thinke that hee that hath the nomination ſhall be Patron onely, and that he that ought to preſent, ſhalbe as ſeruant to him that hath the nominatiõ.

24.E.3.69 *a.b*,14 *H.*4 11.*a*.1.*H.*5 16.5.*E.*4. 123.*a*.21. *H.*6.17.

Therefore in the 14.*E.*4. 26. the Iuſtices diſtinguiſhed, that if one bee ſeiſied of an *Aduowſon* and granteth to *I. S.* and his heyres to nominate at euery auoydance to him and his heyres a Parſon to be preſented to the ſame Church, which Parſon ſo nominated, ſhall be by him or his heires preſented to the Ordinary, that he to whom the nomination is ſo granted ſhall be Patron.

But if I grant to *I. S.* that at euery auoydance hee ſhall nominate to me two Clarkes, of which I ſhall preſent one to the Byſhop, now I remaine Patron, notwithſtanding this, becauſe the Election is in me which of the parties named ſhall bee preſented and haue the benefice.

If a man haue the Nomination to a Benefice, and an other the Preſentation, and he that hath the Preſentation granteth an Anuitie to a Clarke vntill he be aduanced to a Benefice by the Grantor, if afterward the Church become voyd, and the Grantee bee Nominated, to the Grantor to be preſented ouer, who doth ſo accordingly, and vpon this bee admitted, Inſtituted and Inducted, yet the Anuitie ſhall not ceaſe, for that,

that the Grantee was not thereunto preferred by the Grantor, although he preſented him. Of the other part there is an authority, that if a Spirituall man haue the Preſentation, and a Lay man the Nomination, if the Lay man nominate to the Eſpirituall man a Clarke to bee preſented over, who doth ſo accordingly, if before his admiſſion the Lay man nominate another to bee likewiſe preſented, which the Spirituall man refuſeth to doe; for that, that hee hath preſented one already by his nomination, the Lay man ſhall not maintaine any *Quare Impedit* againſt the Preſentor for ſuch refuſall; becauſe, the Spirituall man is Patron, and beeing a Spirituall man, hee cannot change his preſentation alreadie made; Alſo it ſhould ſeeme in ſuch caſe, that the preſentation ſhould bee made onely in his Name, that hath the Preſentation, and not in his name that hath the Nomination; therefore, if the Ordinary ſhould refuſe the Clarke for diſabilitie, notice ſhall be giuen only by him, to him that hath the Preſentation, & not to him that hath the nomination; for the better reconciliation of of thoſe and the like authorities, *diſtinguendum eſt ſic*, that in reſpect it muſt bee had of ſuch an Eſtranger, as ſhall vſurpe vpon the Byſhop or vpon the Patron in regard of each other, and in reſpect of all ſtrangers that vſurpe; Hee that hath the nomination is onely Patron, and ſhall haue a *Quare Impedit* or a writ of Right, as h e

caſe

case requireth: In which his writ of *Quare Impedit*, shall be this; *Quam permittit ipsum presentare*: but his declaration shall bee especiall, that the Plaintiffe ought to nominate one, & that he ought to present him ouer to the Byshop, and that *B.* hath diurstbed him of his nomination, and the writ to the Byshop shall bee a recoverie to the Plaintiffe, *Quod Episcopus admittat Clericum ad denominationem, &c.* in respect of the Byshop that hath the presentation, he shall be said Patron; for if hee that hath the Presentation cannot varie from his presentation, the other shall not; yet if hee that hath the presentation, and he that hath the nomination bee both Laymen, then he that hath the nomination may varie in his presentation, and change the same as often as he will, vntill Institution be had: wherefore in the former case it ensueth, that if hee that hath the presentation bee a Spirituall man, and present him that is nominated to him, beeing not fit, hee ought not to haue notice giuen him of the refusall of the Ordinarie, for this cause, he that hath the nomination shall not haue any notice likewise.

For I thinke the Law to bee thus; If one hath the nomination and another the presentation, and the Church becomes voyde, if the Laps incurre, and hee that hath the Presentation onely presenteth to the Byshop, before the Byshop take benefit of the Laps, without any nomination of

the other, the Byshop in this case ought and is bound to admit his Clarke that hee so presenteth, as the Clarke of the Patron himselfe. If respect be had each of other, then are they both Patrons after a manner, and by iniurie offered by every of them to the other, one of them may punish the other. As if he that hath the nomination will present immediately to the Ordinarie, he that hath the presentation may bring a *Quare Impedit* or a writ of right of *Advowson*, against him as his case requireth, so if hee that hath the presentation refuse to present the Clarke nominated to him, or present one himselfe without nomination, the other shall bring a *Quare Impedit* or a writ of right against him, and his writ shall bee *Quod permat. ipsum presentare, &c.* But in his declaration hee shall declare the especiall matter.

Fitzh. 33. *b* 14. *H.* 4. 11. *a.* 21, *H* 6. 17. *a.*

In every of which suites and recoveries, and in the writ to the Byshop shall be so, if hee that hath the nomination present to him that hath the presentation, he that hath the presentation may disturbe him in two manners; eyther by refusing the parson nominated, or by presenting some other himselfe that is not nominated. If hee refuse to present him that is nominated to him; and suite bee commenced without any actuall presentation made by himselfe, then the writ to the Byshop of him that hath the nomination shall bee, that hee shall recouer his nomination,

24. *E.* 3, 69 *b.*

and

and that the Byſhop ſhall admit ſuch as the other hath nominated to the preſentor, according to his grant of nomination: But if the diſturbance vpon which the ſuite is granted bee becauſe the preſentor that ſhould preſent the parſon nominated, hath preſented ſome other himſelfe, without nomination, then the nominator ſhall haue his writ to the Byſhop to preſent his Clarke immediately without any nomination at all, to be made to the other, that hath the preſentation and to remoue the other Incumbent.

Finallly, if one hath the nomination, and another the preſentation, if ſuch right of preſentation acrew to the King, this ſhall preiudice, the inheritance of him that hath the nomination but he ſhall nominate to the Chancellor ſtill, who in the name of the King ſhall preſent to the Ordinarie. And if the King preſent without any ſuch nomination, the nominator ſhall bring his *Quare Impedit*, againſt the Incumbent onely, becauſe the King cannot be tearmed as a Vſurper.

Lect. 13.

The things incident to Presentation prosecuted, who may present, what Parsons may bee presented, to whom the Presentation must be made, and the manner thereof.

Efore hath beene shewed what a Presentation is, and what is the effect and fruit of the Patronage; and finally, in what case the Presentation and Nomination differeth.

At this time it resteth, how to prosecute the things incident to Presentation, and to make show who may present, what parsons may bee presented, to whom the Presentation must bee made, and in what manner; But because no presentation can bee made vnlesse to a Church or Dignity, something shall bee showed, when they shall bee voyde, and vpon what occasion.

An avoydance is in two sorts, actuall in Deed, destitute in Law, which is an avoydance *de Facto*, and auoydance *de Iure*.

Actuall, is when the Church is actuall in deed destitute of his Incumbent in Law, when the Church being full of an Incumbent, is notwithstanding

ſtanding fruſtrate of his right and lawfull Incumbent by reaſon of incapacitie or crime in the parſon of him that occupieth in ſteed of the righrfull and lawfull Incumbent, and therefore amongſt the Canoniſts, *Eccleſia Dr. viduam tuam ſponſumque habet inutilem*, there is therefore a great difference betweene voydance in Law, and voydance in deed; the firſt of which two, the Eſpirituall Court hath to determine, and therefore the ſupreame head may ſo diſpenſe there, that ſuch auoydance in Law ſhall neuer come to be auoydance in deed, and of auoydance in Law no title accreweth to the Patron, vnleſſe ſomething bee thereupon accompliſhed, by the Eſpirituall Court, as a declaratorie ſentence or ſuch like; but, vpon avoydance in deed, preſentment accreweth to the Patron, yet in ſuch and the like caſes, *Diſtinguendum eſt*, for if the dignitie bee temporall, as a Maſter of an Hoſpitall or ſuch like, and that there be found defect in him by viſitors, it is an actuall avoydance, and the Patron may vpon this make a new collation, without ſolemne ſentence of depriuation; but if the dignity bee Eſpirituall, it is requiſite vpon ſuch defect that ſentence of Depriuation bee giuen, before auoydance can bee, and that ſuch ſentence be notified to the Patron, otherwiſe Laps ſhall not incurre againſt him,

Avoy-

Auoidance and Plenartie, are *primatiua contraria*, which if they come to bee tryable by issue betweene the parties, they are tryed by two distinct Lawes. Plenartie, which is, if the Church be full of an Incumbent or not, shall bee tryed by the Common Law, which is by the certificate of the Ordinarie; but Avoydance, which is, if the Church bee voyde or not, shall bee tryed by the Country impanuelled in a Iury, notwithstanding if the issue bee vpon any speciall sort, or manner of avoydance, the same shall be taxed by the certificate of the Byshop, so that such speciall cause shall be Spirituall.

The efficient causes of avoydance, are eyther temporall as Death, or spirituall as Depriuation, resignation, creation session, and entrie into Religion, whereof more shall bee said afterward.

Lect. 14.

The two first particuler causes of Avoydance of Churches, viz. Is eyther Temporall, as Death; or Spirituall, as Depriuation; the one of it selfe being manifest, and the other a discharge of the Dignitie or Ministerie.

IN the last Lecture or reading before, was shewed something of auoydances of Churches in generall, now it remaines to pursue the perticular meanes; that is to say, Death, Depriuation, Resignation, Creation, or Cession, and entrie into Religion, of euery of which, we will speake something, as the cause requireth.

1 And first of all, concerning Death, *Quæ omnia soluit*, the matter of it selfe is manifest, and needeth no further declaration.

2 As concerning Depriuation, it is a discharge of the Incumbent of his Dignitie or Ministerie, vpon sufficient cause against him conceiued and prooved; for by this, hee looseth the name of his first dignitie, and herein two manner of wayes; eyther by a particuler sentence in the Spirituall Court, or by a generall sentence by some positiue or Statute Law, of this Realme.

1 Deprivation, is in the Spirituall Court for that, that it is grounded vpon some defect in

the partie deprived, although it bee by act of Law, yet it is deemed as the act of the partie himſelfe. The cauſes of Depriuation by Cenſure in the Spirituall Court are to be referred to the Common Law, therefore let vs remember ſuch of them, vpon which queſtions haue beene mooued in the Bookes of our Law, all which cauſes mentioned ſeuerally, may bee reduced to three principle points; firſt, want of Capacity; ſecondly, Contempt; thirdly, Crime. As concerning the firſt, although by the Common Law, a Lay perſon bee preſented, and Inſtituted, and Inducted, to an eſpeciall Benefice, which Curate is altogether vncapable of the ſame, yet the Church is not therefore to bee ſaid voyde, as if no preſentation had beene, but it is ſtill full of an Incumbent, *de Facto licet non de Iure*, vntill by ſentence Declaratorie for his want of Capacity, the Church be adiudged voyde, and vpon this no Laps ſhall incurre againſt the Lay Patron, without notice (of ſuch incapacity, & ſentence of deprivation thereupon) to him giuen, King *H.* 4. preſented one that was incapable of his preſentation, and the Preſentee was thereby admitted, inſtituted & inducted, and afterward the Pope enabled the preſentee by his Bill, yet the King had a *ſcire fac.* and thereby recouered his preſentation againe, becauſe the Incumbent was not capable whē he was preſented. If the Patron preſent one that is meerely a Lay

man

man, within the age of 25. & he vpon this be Admitted, Instituted, and Inducted, and afterward a *Qua. Imp.* be brought against the Patron and the same Incumbent, whereof Iudgment is given by the default of the Incumbent, where indeed the Incumbent was neuer at any time duely sommoned according to the Law, by reason of which Iudgment, the same Incumbent is removed, if vpon this afterward, the said Incumbent by sentence declaratory be deprived in the Spirituall Court, for want of Capacity in suite there, for the cause of his incapacity exhibited against him, such sentence is good, & availeable in the Common Law, although the said Incumbent were before removed from his Benefice by the Iudgement giuen against him in the *Qu. Imp.* for though such declaratory sentence giuen against him by the Spirituall Law, cannot remoue him that is removed already, yet it shall make this Incumbent answerable to the next Incumbent, for all the meane profits received by him, that was the first Incumbent, from the time of his Induction. Yet if the first Incumbent so depriued, will afterward bring a writ of deceipt vpon the Iudgement given against him in the *Quare Impedit* by default; for that, that he was not sommoned as aforesaid, hee shall haue Iudgement herein, and the same Deprivation had in the meane season in the Spirituall Court, no Impediment therevnto; for that, that in the said suite of Deceipt

the Incumbancie ſhall not be in queſtion, but onely the diſturbance of the Plaintiffe, in the *Quare Impedit*, and ſo for Incapacitie.

Contempt, may likewiſe be a cauſe of Depriuation, as if the parſon or other Incumbent bee Excommunicate, and he ſo remaineth in his obſtinacie for the ſpace of fortie dayes, hee is for this depriuable of his Benefice, and yet the Church is not voyd in Deed, without ſentence in Depriuation giuen againſt him, and if before ſuch Depriuation, the King as ſupreame Ordinarie and the head of the Church would haue a Diſpenſation to the Incumbent, who for all the ſentence of Depriuation for his contempt had, hee ſhall hold his Benefice; ſuch Diſpenſation were voyde, and ſhould reſtraine the Patron from his preſentation acrewed to him, by meanes of ſuch Depriuation after enſuing.

The third cauſe, is Crime, within which may be comprehended Delappidation, or ſpoyle of the Church Benefice, once, in our Bookes, worthy of Depriuation, likewiſe Schiſme or Hereſie; for the which, or if for ſome other cauſes the Incumbent were depriued in anciant time in the Court of *Rome*, vpon ſuch Depriuation comming in queſtion in our Law, the iſſue ſhould be vpon the avoydance, and it ſhould be tryed where the Church or dignitie is; but becauſe, Crime is *Hidra*, with many heads, and an evill Tree, whereof is bred *Ingens prouentus* much fruit

fruit, for all fruit of offences which may be comprehended vnder this name; therefore let vs surceaſe further to deale with it, onely in generall, noting thoſe three things as the incidents, and conſequents of Depriuations.

Firſt, that our Law adiudgeth not the Church actually voyde, without a ſentence of Depriuation, as hath beene before prooued.

Secondly, that though ſuch ſentence of Deprivation be meerely wrongfull; yet the Dignitie is voyd, and the ſentence remaineth in his force, vntill it bee releaſed.

Thirdly and laſtly, if the party depriued within time require by this Law an appeale (vpon ſuch ſentence of Depriuation giuen againſt him at the Court of the high Iuriſdiction) ſuch is the nature of an Appeale, that it holdeth (the ſentence vpon which it was firſt brought) in ſuſpence; becauſe, in the Common Law it is ſaid, to haue *effectum ſuſpenſum prioris pronuntiati*; and therefore, if it bee brought vpon Depriuation, it voydeth the vigour thereof, and reuiueth the former dignity, for ſuch Church ſhall not be voyde, vntill the firſt ſentence of depriuation chance to be affirmed in the appeale, and thus much of Depriuations in the Spirituall Court, ſhall ſuffice at this time.

Concerning Depriuation by Cenſure of Statutes and Poſitiue Lawes, ſee theſe Books; that is to ſay, 13. *El. Cap.* 12. 26, *H.* 8. *Cap* 3. reviued by the 1. *El. Cap.* 31. or 3.

Lect. 15.

The third particular cause of Avoydance, being Spirituall, is Resignation.

THe precedent Lecture before going, hath shewed the particuler causes of Auoydance of Churches, whereof the two first, Death and Depriuation, hath beene at large disciphered; the next is Resignation, of which I will also at this time something speake.

Resignation, or as the Canonists tearmes it *Remytation, Est Iuris proprij Spontanea refutatio*, or whereas Resignation is the voluntarie yeelding vp of the Incumbent (into the hands of the Ordinarie) his interest and right which he hath in the Spirituall Benefice, to which he was promoted. Of which the matter or subiect is the Spirituall benefice, as promotion Ecclesiasticall.

The forme is the manner how, and with what words and due Circumstances it is or should be accomplished.

The finall Causes or effects hereof, is eyther thereby to make the Spirituall Benefice void and destitute of its Incumbent, or vtterly to anient and totally to extinguish such Spirituall promotion.

The efficient Causes are the persons that re-

signe,

signe, and the persons to whom it is or ought to be resigned.

As concerning the matter; this onely may suffice to be obserued, that all Spirituall Dignities presentatiue may properly be resigned, although they be Abbies, Priories, Prebends, Parsonages, or Vicaridges, yet such Dignities as are certaine may also be resigned, or to speake more properly relinquished, as were some of the Abbies in the time of King *Hen.* the 8. and so may Bishoppricks at this day be resigned, &c. into the hands of the King as supreme Ordinarie of the Church and rightfull Patron of the same Bishoprickes.

As concerning the forme of Resignation, and protestation which must be when the partie will resigne, they are set out in the Register, *fol.* 302. in the folioes of the Booke following, as *Fitzh.* noteth in his *Nat Br. fol.* 273. *F.* or *S.* The words of chiefe effect in such instrument of Resignatino, are *Remantiare, Edere, & Dimittere*, for Resignation is not any proper tearme of the Common Law.

Yet the Law of this Realme, more respecting matter then formalitie of words, hath adjudged a Graunt made by a Prebendarie to the King, to be an effectuall Resignation in the forme of these words following, that is to say:

Noverint me A. &c. ex animo Deliberatiuo, certa scientia & mero motu, & ex quibusdam causis iustis & rationalibus me specialiter mo-

uent.

uent. vltrò & ſponte dediſſe ſereniſſimo Domino noſtro Ed. 6. Angliæ, &c. ſupremo Capiti totorum Prebendarum ſuorum ac omnia maneria terras, tenementa poſſeſſiones & hereditamenta quecunque, tam ſpiritualia quam temporalia, ac omnem plenam & liberam facultat. diſpoſitionem authoritat. & poteſtat. dictæ prebendæ pertinen. ſpectan. appenden. &c. habendum & tenendum eidem Rege Hereditor. & Succeſſoribus ſuis, ad eius vel eorum proprium vſum, &c.

As touching the efficient cauſes of Reſignation; as firſt, the perſon that reſigne, if hee be not but onely Admitted and Inſtituted, although as concerning the Spirituall Function he be a Parſon before Induction, yet becauſe no part of the Free-hold of the Spirituall Benefice is transferred to him, but by the Induction, hee cannot vntill after the Induction, if the King be Patron, make any good and effectuall reſignation; as therefore, *Renuntiatio reſpiſit plerumque ius queſitum, ac repudiamco pertinet adius nondum acquiſitum.* As alſo for that, that by this ſubmiſſion and Inſtitution, the Church is not full in reſpect that the King being patron, ſuch Incumbent before Induction is full ſubiect to haue his Preſentation and Inſtitution revoked.

Com. 526.

21. E. 3. 5. a

But if a Subiect bee Patron, and his preſentee be admitted, ſuch preſentee (if hee be willing to leaue his Charge) may before Induction reſigne the

the Church, for the eſpirituall Dignitie was full of an Incumbent in reſpect of his Patron, and becauſe alſo there is no other meanes to cleare the Church of him but by ſuch renunciation.

As concerning the perſon to whom Reſignation muſt be made, *Diſtinguendum eſt*; for if he be onely purpoſed to auoyd the Church, and to cauſe the Patron to preſent againe, then it ought to bee done to the Ordinarie to whom of right the Admiſſion and Inſtitution belongeth, and to whom the Patron is bound to preſent; for it is a Rule amongſt the Canoniſts, *Apud enim debet fieri renuntiatio apud quem pertinere, dignoſcitur confirmatio*, and Reaſon will, it ſhall be ſo; becauſe the King as ſupreame Ordinarie, if ſuch Reſignation ſhould be made to him, hee is not compelable to giue notice to the Patron of ſuch Reſignation, nor can hee or any other Ordinarie collate vpon the patron ſuch notice.

Notwithſtanding, if the purpoſe be vtterly to extinguiſh ſuch Dignitie ſpirituall, the ſame Reſignation may be made to the King, as to the ſupreame head of the Church, as in ancient time it might haue beene made to the Pope.

For ſuch Authoritie and Iuriſdiction as the Pope vſed in this Realme, was contradicted by an Act of Parliament made in the 25 *H.*8. and other Statutes to be in *H.*8. and his Succeſſors; which Iudgement and opinion I hold to bee firme Law, eſpecially where the King himſelfe

is Patron, or where the Patronage is to ſome Spirituall man for euer, vpon Spirituall parſons the Pope (before the Statute of the 25 *E.*3.) by his prouiſions and other meanes vſed more Iuriſdictions then at any time Lay perſons could be permitted to doe. The finall effect which conſiſteth in the end, wherefore Reſignation was ordained, wee haue heard to be two-fold, the
1. one to adnihilate the Spirituall promotion,
2. other to make it voyde and fit for no Incumbent; of the firſt, we haue ſufficiently ſpoken before, and the vſe of the other is manifeſt by thoſe authorities ſubſequent.

A Prebend maketh a Leaſe for yeares rendering rent, and after reſigneth it, it is holden cleerely, that by this his Reſignation, this Prebend is diſcharged of the rent, and therefore ſuch charge ſhall not be any burthen to his ſucceſſour; likewiſe if a parſon reſigne after hee hath made a Leaſe for yeares, the Leaſe is avoyded.

Likewiſe, if a Parſon permute or Change his Benefice, which indeed cannot bee accompliſhed without Reſignation, the Charge or Graunt made by ſuch Incumbent for yeares, is vtterly voyde.

If a Parſon grant an Anuitie out of the parſonage, and after reſigne, if after all this the Patron and Ordinarie will confirme ſuch Graunt, the Confirmation, and the Graunt which was

voyd

voyd before Confirmation cannot be availeable.

With which agreeth *Pollyard*, who ſaith ; 14.H.8.8.a
that if a parſon charge a Gleebe, and after reſigneth or dyeth, the charge is avoyded.

A Recoverie was had againſt a Parſon in an action of Debt, and in a *fieri fac.* therevpon the Sheriffe returned, that the defendant was *Clericus Beneficiatus & non, &c.* in this caſe, if the Defendant reſigne, the plaintiffe is deſtitute of his recovery, for by ſuch Reſignation the Church is diſcharged; becauſe, the Ordinary cannot ſequeſter the Spirituall Benefice vpon any proceſſe awarded to him.

But if the Incumbent that ſo chargeth, bee ſuch as hath by the law abſolute power to deale with the lands of his Spirituall Dignitie, without the Confirmation of any other, and may by the Law diſcontinue as Abbot or pryor or ſuch like, then ſuch charge by him ſhall not be voyd, by ſuch Reſignation, but ſhall continue againſt his ſucceſſors vntill it bee avoyded by ſome other meanes.

Thus much concerning the finall cauſe of Reſignation, to which ſuffer vs to annexe the cauſes allowed by the Common Law, to mooue a Byſhop or any other beneficed parſon to relinquiſh and ſurrender their function, *Conſcientia criminis debilitas corporis, defectus ſcientiæ, malitiæ plebis, graue ſcandolum, & irregularitas perſonæ.*

Laſtly, let vs conſider, that Reſignation is deemed in the Law totally to be the act of the partie, and therefore if any Incumbent being plaintiffe in any action reſigne his Dignity or promotion, his writ brought by him as Incumbent ſhall abate.

But if ſuch Incumbent take out a writ concerning his Rectory, and afterward reſigne, and againe be promoted to the ſame Dignity, before the returne of the Writ aforeſaid, it is good and auaileable.

Vpon the part of the Defendant vpon the ſame reaſon, is the Law; that if any action bee brought againſt any Incumbent, that may charge him in reſpect of his ſeuerall promotions, his reſignation (hauing the ſame ſuite; for that, that it is his act) ſhall not abate ſuch writ or action.

It is to be noted, that there are two ſorts of Reſignations, the one is abſolute, when the Incumbent intendeth ſo to make voyde the Church, and to ſurrender his right therein to the Ordinary, whereupon the Patron may preſent whoſoeuer it ſhall pleaſe him to the Church, as if the ſaid had beene voyded by Death, or other meanes of Avoydance, as by precedent authorities hath appeared.

The other cauſe of Reſignation, is *cauſa permutationis*, of which in the Regiſter, *fol.* 306. *b.* appeareth a precedent.

Where-

Whereupon alſo enſueth the forme of Preſentation in this manner.

In Dei nomine, Ego H.W. nunc Rector Eccleſiæ de P. London. Dioceſies & prius Rector Eccleſiæ de L. c. Dictæ P. Dioceſies proteſtor dico & allego in hijs ſcriptis quod ſi contingit quod huiuſmodi Eccleſia mea, de P. abſque dolo & culpa meis in hac parte à me aliqualiter evincatur volo & intendo ad Dictam Eccleſiam de N. abſque aliqua difficultat. libere & licite redire, & eam rehabere iuxta Canonicas ſanctiones & proteſtor inſuper quod non intendo nec volo ab huiuſmodi proteſtatione ſeu affectu eiuſdem recedere aliqualiter in futurum ſed eidem proteſtitationi & contentis in eadem volo & intendo in futuris temporibus firmiter adhærere, iuris beneficio in omnibus ſemper ſoluo, &c.

But to what purpoſe Proteſtation ſhould ſeem in our Law, I cannot perceiue; for that, that it appeareth by the Booke in the 45 *E.* 3. & *Fitzh.* exchange it.

Lect. 16.

The next speciall meanes, in Avoydance of Spirituall promotions Presentatiue, is Creation.

NOw Creation is, where the Incumbent is not onely Elected, but consecrated Byshop, or Archbishop. By the former Dignities of such Consecrated, the Benefices becomes voyd, and the Churches or places seuerall (where their former Sanctuarie was to be executed) and vtterly discharged of their Incumbent, and this immediatly vpon Consecration without solemne sentence Declaratorie in the Spirituall Court.

The reason whereof, is not onely for Inconuenience of Pluralities; but also, because it should be likewise inconuenient for one and the same parson to be a Subiect and a Soueraigne, which in the course of our manner of Iurisdiction cannot be, but is reserued in the Superiour.

Neuertheless, such auoyuance is not before Consecration or Creation, nor before Consecration is he that is promoted, deemed or called Bishop, or Archbishop: as appeareth by these authorities of 5.*E.*2.*Fitzh.br.*250. *vide* 9.*E.*3. *f.*1.*trial.*571.7.*E.*3.40.*a.b. vide* 21.*E.*3.40.*a.b.* 41.*E.*3.56.*b.* 46.*E.*3.32. 11.*H.*4. 37.59.76.*&* 22.*H.*6.27.*a.*

For

For the better vnderſtanding of this kind of Auoydance, it is to be noted, that as foure things are required to concurre for the full perfecting of any Parſon or Parſons preferred to any Dignitie Eccleſiaſticall, preſentatiue or Collatiue, as (to wit.) firſt of all Preſentation, or as the caſe requireth Collation; ſecondly, Admiſſion; thirdly, Inſtitution, and fourthly & laſtly, Induction.

So in the promoting of a Biſhop or Archbiſhop, by the Spirituall lawes, were required (before the ſtatute of the 25. *H.* 8. *cap.* 20.) alſo foure things, anſwerable in many reſpects to the foure former before recited. As firſt Election, ſecondly Confirmation, thirdly Conſecration, Creation, or Inveſture; and fourthly, Inſtallation, or Inthronation.

The Election was made by the Deane and Chapter, or by the Pryor and Couent, where they being as Deane and Chapter, as in euery of the ſeas Cathedrall of *Canterbury*, *Worceſter*, and *Norwich*, in which Churches the Pryor and Covent was till the diſſolution of Monaſteries, at which time the ſame Pryories were diſſolued, and in ſteed of them in euery of the ſame Cathedrall Churches, a Deane and Chapter hath been by priuate Acts of Parliament erected. But in ſome other Cathedrall Churches, the Election hath beene both by Deane and Chapter, as of *Wells*; and by the Pryor and Covent at *Bathe*; and in the Sea of *Coventry* and *Lichfield*. And in ſome

ſome other Cathedrall Seas, the Election of the Byſhop haue beene by two ſeuerall Deanes and Chapters, as in the Archbyſhopricke of *Dublin* in *Ireland*, where both the Deane and the Chapter of *Chriſts Church*, and the Deane and Chapter of Saint *Patricks* joyned in Election, and both of them vſed to confirme the grants of the Byſhop, although *Chriſts Church* was knowne to be the more ancient Church to that Sea.

As concerning therefore the Election of Archbyſhops and byſhops, the Kings of this Realme of their prerogatiue royall, and being immediate Patrons of the ſame Cathedrall Church, in ancient time gaue and beſtowed of their imperiall Iuriſdiction, Archbyſhopricks and Byſhopricks, to ſuch worthy parſons as they thought fit, without any Election of the Chapter as appeareth, in the 17. *E.* 3. 46. *Stower*, and this inueſture was by a ring and a little ſtaffe, by the Deliuerie of the King, and Enſignes of the Byſhop; but afterward in the time of King *Iohn*, in as much, as the Popes had made conſtitution, that no man ſhould enter into the Church by a ſecular perſon, totally, and that the Biſhop of *Rome* coueted to erect the Popery aboue the Throne of Kings. A great Controuerſie was now amongſt the Monkes of *Canterbury*, vpon the death of *Hubbert* their Archbyſhop, concerning the Election of a new one, and although the youngeſt ſect of the Monkes hauing

uing licenſe of the King, and alſo appointment of the King to chuſe *Iohn Gray*, one of the Byſhops in this Realme for their Archbyſhop, yet the quarrell grew to ſuch fervencie, that it could not be quenched vnleſſe from *Rome*, where the Pope taking opportunity of ſuch diſſention, would not receiue any of the Elected, but forced the Monkes to chuſe for their Archbyſhop *Stephen Langhton*, then Cardinall of Saint *Chriſogon*, whereof enſued the great diſcord betweene the King, and the Pope; of which, ſuch was the tyranny of Antichriſt, that not onely the whole Land was interdicted, and ſo remained fiue yeares. But the King was accurſed, and the Subiects were diſcharged of their obedience, and oath of their allegiance to their naturall Prince; and *Lewis* the French Kings ſon provoked to make warre, againſt King *Iohn*, vntill he were conſtrained to ſeeke peace at the hands of the Pope, to yeeld his Crowne to the Legate, and after fiue dayes to take it againe at the Legates hands, and become feodary tenant to the Pope for the ſame, paying an annuall ſum of mony to the Church of *Rome*, for euer; but alſo to content his Cleargy, he gaue to them alwayes free Election of Spirituall Dignities, which memorable antiquitie of the Kings prærogatiue and the loſſe thereof, is briefly touched in the 2. *H.* 4. 686. and more at large by the Hyſtories of thoſe times, and although hereby free

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Elections were giuen to the Cleargie, yet ſued they forth the Kings licenſe to proceed to Election.

The Election of a Biſhop thus made, did not beare the name of a Biſhop but was to be called Lord elect of the place or Biſhoprick, to which he was elected.

The ſecond is Confirmatiõ, which was vſually made by the Biſhop of *Rome* and not any other, who (before ſuch confirmation) vſed to examine the partie, and vpon cauſe of nonabilitie to refuſe him.

The third is Conſecration, which was performer by the Biſhop and two other Biſhops at the leaſt of the ſame province where the Biſhoprick then was, being thereunto appointed with the vſe of certaine Ceremonies, as beatitudes, holding of the Bible ouer the head of the Parſon to be Conſecrated, laying on of their hands vpon his head, anointing, and other rites, therevnto requiſite; And yet it is ſaid, that the Pope reſerued the conſecration of the Biſhop to himſelfe after election and confirmation, and before creation and Conſecration: he that was ſo elected and conſecrated, might ſtill retaine the name of his former dignity, and if hee would refuſe the impoſed charge of the Biſhopricke.

38.E.3.30 b.

5.E.2. *Fitzh.* 800, 2,E.3. *Fitzh.brc.* 250,21,E. 3.5.6.

And yet after Confirmation and before conſecration, of the parſon confirmed, hee might exerciſe ſo much of his Spirituall function as concerned

concerned the Iurisdiction, but no matters concerning Ordination might he meddle with, for the full vnderstanding whereof it is to bee knowne, that all things belonging to the Episcopall function or Ministery, are to be reduced to three points; for they belong to him, either *Ratione Iurisdictionis*, as the hearing of spirituall causes, Censures, and Corrections ecclesiasticall, as Excommunications vpon offenders and such like which may be performed by him after confirmation.

Or, *Ratione Ordinationis*, as giuing of Orders, consecrating or allowing of Churches, or such like, which he cannot doe before consecration.

Or, *Lege Diocesiana*, as the execution of Ecclesiasticall payments and pensions due to him, as diocesian of the Clargie rated vpon the bishoppricks of his Diocesse, called therefore by the common Law *census Cathedraticus*.

Notwithstanding, the King may restore to him his Temporalties after confirmation and before consecration if so it please his highnesse, but this is *De gracia & non de iure*. 41, E, 3, 56 46, E, 3. 32 a.

But after Consecration, he was holden in all respects a perfect Bishop, and all his former dignities thereby were avoided, for although by Confirmation *spirituale coniugium contrahetur*, yet by consecration *consumatur*.

The last thing is, Installation or inthronation, by which he is fully enabled, to pursue his Tem-

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poralties out of the hands of the King, and actually to enioy the benefit thereof, but if after conſecration and before he ſue for the temporalties out of the hands of the King, the free-hold bee in him or no', is diuerſly taken in the 38.*E.*3. 90.*b*,5.

Notwithſtanding, the Metropolitan ought to certifie the day and time of the conſecration of euery Biſhop, within his Dioceſſe, for according thereunto he ſhall be reſtored to his Temporalties, and this I thinke to be reaſon.

Thus you ſee, that in ſome reſpect the Election of a Biſhop reſembleth the Preſentation of a parſon, the Confirmation, reſembleth the Admiſſion of a parſon, the Creation reſembleth the Inſtitution of a parſon, and the Inſtallation or the inthronation the Induction of a parſon, yet in many other reſpects they differ.

And although after the abrograting of the Popes authoritie out of this Realme, it be ordained by the 25.*H.*8.*cap.*20. that the election of Biſhops and Archbiſhops, ſhould be altered and the King reſtored to his ancient prerogatiue therein, which prerogatiue King *Iohn* and his ancient progenitors long ſince enioyed, and although likewiſe the Ceremonies, forme, and manner of conſecration of Biſhops by the Authority of parliaments, in the time of King *Ed.* the ſixt, were now appointed and publiſhed, all acts of parliament being repealed by the firſt

and

and ſecond of *Philip* and *Mary*, are now reuiued and in force, by *Eliz.* yet our former poſition holds now firme Law, that no Church nor Spirituall Dignitie at this day, becommeth voyde, by making the Incumbent therof Byſhop, vntill his Conſecration, as well by rigour of ancient time, as by Statute.

And therefore at the Common Law, if the King vpon defect, or otherwiſe, giue by vertue of the 25. *H.* 8. 20. by his Letters pattents to any fit parſon, any Byſhopricke or Archbyſhopricke within this Realme, without Election, and therevpon before Conſecration reſtore to him his Temporalties, or if the Pope had giuen a Byſhopricke to any fit perſon by reſeruation, which amounteth in Law to an Election and Confirmation, if the King had reſtored to him his Temporalties, yet in both caſes vntill Conſecration, he is no perfect Byſhop, nor his former Dignities by ſuch Grant and reſtitution of Temporalties become voyde vntill Conſecration as aforeſaid.

If before the 25. of *H.* 8. 10. the Incumbent of a Benefice had beene Elected Byſhop and confirmed, and before conſecration had, obtained of the Byſhop of *Rome*, a diſpenſation ſtill to enioy his former benefice, notwithſtanding his Creation or Conſecration, had enſued accordingly; yet by ſuch Creation, the Church ſhould not haue beene voyde, but the partie ſtill enabled to retaine the ſame Benefice againſt the patron

by vertue of such Dispensation.

So at this day, if an Incumbent of a Spirituall Benefice, be elected and confirmed, and before hee bee consecrated, obtaine licence or dispensation of the Archbyshop of *Canterbury*, to detaine the Benefice *incommendam*; yet hee shall be promoted to the same Byshopricke, although his licence neuer bee enrolled in the Chancerie, according to the 25. *H.*8. but onely enrolled by the Register of the Archbyshop, although the Consecration be before this licence or dispensation appointed to take effect, yet by vertue of such Dispensation, the former Dignitie or Benefice becommeth not voyd, by the same Consecration. Yet if the Incumbent of any Spirituall benefice be elected, consecrated, and confirmed Byshop, and after his Consecration procureth a Dispensation of the Pope in papacie, or of the Metropolitan since the Stat. of the 25.*H.*8.*c.*20. such Dispensation shall not be available; because, by the Consecration, the former Dignity or Benefice was actually, and in Deed voyd; and then, neyther the Dispensation of the Pope, could at any time, nor of the Metropolitã at this time, take from the Patron, the right of his presentation of such avoyded Dignitie, by the Consecration acrewed to him; because, after the first Dignitie is once voyde by the Consecration, the Dispensation commeth too late.

Yet the King, *Ex summa auctoritate sua Regia Eccle-*

Ecclesiastica qua fungitur, may grant (to the Byshop that is consecrated) power to take and receiue by presentation, Institution and Induction, any Spirituall Benefice, and to hold the same in *Commendam*, notwithstanding his estate of being Byshop, for so the Pope vsed to doe, and the same Authority is recogniſed by the Statute of the 25. *H.* 8. to be in the King or Queene of this Land, which was within this Realme by the Pope.

Finally, this is to be noted, that whereas before it hath bin said, that Deprivation is the act of the Law, yet grounded vpon the act of the partie; So is Creation of the Byshop, the act of the Law, wherefore if a man bring an action and pendant his writ, bee created Byshop, the writ shall not abate; because, it is onely the act of the Law, but yet Resignation is meerely the act of the party, thus much for Creation.

FINIS.